

# EXHIBIT 2

Page 1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 JAMES PHILLIPS, ET AL. )

5 Plaintiffs )

6 )

7 VS. ) Civil Action No.

8 ) 4:18-cv-00821

9 )

10 WIPRO LIMITED, )

11 Defendant )

12 \*\*\*\*\*

13 ORAL AND VIDEOTAPED DEPOSITION OF DAVID NEUMARK, PH.D.

14 AUGUST 25, 2021

15 \*\*\*\*\*

16 ORAL AND VIDEOTAPED DEPOSITION OF DAVID NEUMARK,

17 PH.D., produced as a witness at the instance of the

18 Defendant and duly sworn, was taken in the above styled

19 and numbered cause on Wednesday, August 25, 2021, from

20 10:00 a.m. to 1:38 p.m., before SARA BIELAMOWICZ, CSR,

21 RPR, in and for the State of Texas, reported by

22 computerized stenotype machine via Zoom Videoconferencing.

23 The witness is located at his residence in San Francisco,

24 California, pursuant to the Federal Rules of Civil

25 Procedure and any provisions stated on the record herein.

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14 Exhibit 1 Report by Dr. Neumark 7

15 Exhibit 2 2014 Wipro Global Company

16 Policy 67

17 Exhibit 3 2015 Wipro Global Company

18 Policy 67

19 Exhibit 4 2017 Wipro Global Company

20 Policy 67

21 Exhibit 5 2018 Wipro Global Company

22 Policy 67

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19 REPORTER'S NOTE:

20 All quotations from exhibits are reflected in the manner

21 in which they were read into the record and do not

22 necessarily denote an exact quote from the document.

23

24

25

Page 2

1 APPEARANCES

2

3 FOR THE PLAINTIFF:

4 Mr. David Low

5 KOTCHEN & LOW, LLP

6 1745 Kalorama Road, NW, Suite 101

7 Washington, D.C. 20009

8 202.471.1995

9 Dlow@kotchen.com

10

11 FOR THE DEFENDANT:

12 Mr. Allan G. King

13 Ms. Analiza Rodriguez

14 LITTLER MENDELSON, P.C.

15 1301 McKinney Street, Suite 1900

16 Houston, Texas 77010

17 713.951.9400

18 Agking@littler.com

19

20 VIDEOGRAPHER:

21 MR. AVERY GROSS - LEXITAS

22

23

24

25

Page 4

1 VIDEOGRAPHER: Good morning. Today's date

2 is August 25th, 2021. We are on the record. The court

3 reporter will swear in the witness, and we may begin.

4 COURT REPORTER: All right. This deposition

5 of David Neumark, Ph.D., is being conducted remotely via

6 LegalView/Zoom.

7 The witness is located in San Francisco,

8 California. My name is Sara Bielamowicz, CSR No. 4838,

9 and I am reporting this deposition remotely from my

10 residence in Cypress, Texas.

11 All right. Mr. Neumark, please raise your

12 right hand.

13 (Witness sworn.)

14 MR. KING: Mr. Low, before we begin, can we

15 have an agreement that although the witness is not in --

16 in the presence of a court reporter, that this testimony

17 will be given the same force and effect as if it were

18 taken under more conventional circumstances?

19 MR. LOW: Yeah. Assuming we have that

20 agreement for all depositions.

21 MR. KING: Yeah.

22 MR. LOW: Yeah.

23 MR. KING: Thanks very much.

24

25

<p>Page 5</p> <p>1 DAVID NEUMARK, PH.D.,</p> <p>2 having been duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 BY MR. KING:</p> <p>5 Q. Dr. Neumark, my name is Allan King. I am an</p> <p>6 attorney with the law firm of Littler Mendelson, and I</p> <p>7 represent the defendant in this case, Wipro Limited, and</p> <p>8 we're here to take your deposition in that matter.</p> <p>9 Is that your understanding as well?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And I know you've been deposed in the past, so</p> <p>12 you're familiar with the procedure, but still, if I ask a</p> <p>13 question that you don't understand, will you please ask me</p> <p>14 to repeat it?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And if you don't do that, will it be agreeable</p> <p>17 that I can assume that you've understood the question?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And if you need a break, will you please let us</p> <p>20 know but not while a question is pending?</p> <p>21 <b>A. Sure.</b></p> <p>22 Q. You provided a report in this case dated</p> <p>23 August 17, 2021. Is that correct?</p> <p>24 <b>A. Yes. I -- I printed out a copy of it here. It's</b></p> <p>25 <b>the only thing I have just in case --</b></p>	<p>Page 7</p> <p>1 that idea.</p> <p>2 MR. RODRIGUEZ: I can do both if that's</p> <p>3 acceptable or just send it to the witness. What's the --</p> <p>4 what's the preference?</p> <p>5 MR. KING: Well, I want Mr. Low to have a</p> <p>6 copy of it as well.</p> <p>7 MR. RODRIGUEZ: Okay. So I will send it to</p> <p>8 everyone. Attaching it now.</p> <p>9 (Exhibit 1 marked.)</p> <p>10 <b>A. Mr. King, while we're waiting, I have a few</b></p> <p>11 <b>typos, so at some point I would like to give them to you.</b></p> <p>12 Q. (BY MR. KING) I'm sorry, did you say "typos"?</p> <p>13 <b>A. Yeah, things I noticed in reviewing.</b></p> <p>14 MR. KING: Mr. Low, do you have a copy?</p> <p>15 MR. LOW: I do, thank you.</p> <p>16 Q. (BY MR. KING) In that case, please turn to the</p> <p>17 last couple of pages which is Appendix E where you list</p> <p>18 your expert work in the last four years.</p> <p>19 <b>A. I am there.</b></p> <p>20 MR. LOW: Do you know what page number that</p> <p>21 is?</p> <p>22 MR. KING: Yes, it's page 65.</p> <p>23 Q. (BY MR. KING) And, Dr. Neumark, I would like to</p> <p>24 go through a couple of the cases you identify.</p> <p>25 <b>A. Ok.</b></p>
<p>Page 6</p> <p>1 Q. Okay. Well --</p> <p>2 <b>A. -- in case that's easier.</b></p> <p>3 Q. Okay. When you held it up, it was a little thin.</p> <p>4 Do you have the appendices with you as well?</p> <p>5 <b>A. I don't have it all -- it doesn't have the title</b></p> <p>6 <b>page, and I cut it off at my CV because I didn't</b></p> <p>7 <b>actually -- I didn't have to review my CV.</b></p> <p>8 Q. Let's introduce this report into evidence if you</p> <p>9 will.</p> <p>10 MR. KING: And Ms. Rodriguez has a copy that</p> <p>11 she can pass to the court reporter.</p> <p>12 MR. RODRIGUEZ: Sara, I will be sending it</p> <p>13 through the chat.</p> <p>14 COURT REPORTER: If you don't mind, I use a</p> <p>15 separate computer. Can you just email me all the exhibits</p> <p>16 at the end? That would be easier.</p> <p>17 MR. KING: Well, then we need a way to share</p> <p>18 it with the witness.</p> <p>19 MS. RODRIGUEZ: I can use share screen.</p> <p>20 <b>THE WITNESS: I can open it. Oh, you can do</b></p> <p>21 <b>that or the chat? I'd rather you send it in the chat, and</b></p> <p>22 <b>I can open it in a separate screen. Otherwise -- well,</b></p> <p>23 <b>then I can page through it freely, but however you want to</b></p> <p>24 <b>do it.</b></p> <p>25 MR. KING: No, that's a good idea. I like</p>	<p>Page 8</p> <p>1 Q. And I'd like to start with Koehler versus Infosys</p> <p>2 Technologies. Do you see that?</p> <p>3 <b>A. I do.</b></p> <p>4 Q. Okay. And is that a case in which you've been</p> <p>5 retained by the Kotchen &amp; Low firm?</p> <p>6 <b>A. Correct.</b></p> <p>7 Q. And you offered an opinion in that case regarding</p> <p>8 the treatment of non-South Asian employees?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. There's another case called Heldt versus Tata</p> <p>11 Consultancy. Is that a case in which you were retained by</p> <p>12 the Kotchen &amp; Low law firm?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. And in that case you offered an opinion regarding</p> <p>15 the treatment of non-South Asian employees and applicants?</p> <p>16 <b>A. I -- I -- I don't recall what we do on</b></p> <p>17 <b>applicants.</b></p> <p>18 Q. Okay.</p> <p>19 <b>A. I didn't -- I didn't review it for this case.</b></p> <p>20 <b>Employment, yes. I refer here to hiring and termination,</b></p> <p>21 <b>so that's -- the year is correct, that's correct, but I</b></p> <p>22 <b>don't remember the details. It was a while ago.</b></p> <p>23 Q. Okay. Thank you.</p> <p>24 Do you know of a case called Grant versus</p> <p>25 Tech Mahindra?</p>

<p style="text-align: right;">Page 9</p> <p>1 <b>A. No.</b></p> <p>2 Q. Okay. Do you know of a case called Hanloser</p> <p>3 versus ETO Technologies?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. You appeared as an expert witness in that case,</p> <p>6 didn't you?</p> <p>7 <b>A. I filed a report. I believe that's the last</b></p> <p>8 <b>thing I did. So the answer might be no as an expert</b></p> <p>9 <b>witness, but I don't know if that's --</b></p> <p>10 Q. Okay.</p> <p>11 <b>A. I don't know the jargon.</b></p> <p>12 Q. Yeah. So maybe what I ought to ask about the</p> <p>13 criteria you used in determining whether to list a case in</p> <p>14 which you served as -- as an expert witness.</p> <p>15 <b>A. Right. So -- so my understanding of what is --</b></p> <p>16 <b>what is asked for, I don't know if required is too strong</b></p> <p>17 <b>a word, is --</b></p> <p>18 Q. Uh-huh.</p> <p>19 <b>A. -- deposed and/or did I testify.</b></p> <p>20 Q. So you may have submitted more reports, for</p> <p>21 example, than -- scratch that.</p> <p>22 You have been hired and engaged in more</p> <p>23 cases than what would appear in Appendix E because you may</p> <p>24 only have submitted a report in those cases.</p> <p>25 <b>A. Or -- or -- or more -- well, I mean, that --</b></p>	<p style="text-align: right;">Page 11</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. Have you been engaged in a cases called Myerson</p> <p>3 versus Larsen Toubro Infotech?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Have you ever been engaged in a case on behalf of</p> <p>6 an employer that was facing a charge of discrimination?</p> <p>7 <b>A. Let me -- I'm thinking what I can say. Engaged?</b></p> <p>8 <b>No.</b></p> <p>9 Q. Have you ever provided a report in a case where</p> <p>10 non-South Asians were suing over employment discrimination</p> <p>11 in which you concluded there was no evidence of</p> <p>12 discrimination?</p> <p>13 <b>A. No, I've never -- I've never -- never been</b></p> <p>14 <b>engaged in such a case, never -- never seen evidence</b></p> <p>15 <b>pointing in that direction.</b></p> <p>16 Q. Have you read the plaintiffs' motion for class</p> <p>17 certification in this case?</p> <p>18 <b>A. The one just filed?</b></p> <p>19 Q. Yes.</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Did you make any corrections or changes to the</p> <p>22 draft you reviewed?</p> <p>23 <b>A. I didn't review a draft. I saw only the final</b></p> <p>24 <b>version. Let me close my door, please. One second.</b></p> <p>25 Q. Sure.</p>
<p style="text-align: right;">Page 10</p> <p>1 <b>that's not -- that's correct. It's -- that's not that</b></p> <p>2 <b>common, although my recollection is HCL, that is the case.</b></p> <p>3 <b>And of course in other cases, I'm in a much more</b></p> <p>4 <b>preliminary stage where nothing's even been submitted, but</b></p> <p>5 <b>I'm not even sure I'm supposed to reveal those anyways</b></p> <p>6 <b>until a report is filed.</b></p> <p>7 Q. Okay. In the -- I'm sorry, I thought I heard</p> <p>8 someone speak.</p> <p>9 In the HCL Technologies case, you were</p> <p>10 engaged by Kotchen &amp; Low?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. Have you been engaged in the Palmer versus</p> <p>13 Cognizant case?</p> <p>14 <b>A. I -- I actually don't -- I am engaged in the</b></p> <p>15 <b>Cognizant case. I actually don't recall the plaintiff's</b></p> <p>16 <b>name, but -- comes -- to me --</b></p> <p>17 (Audio distortion.)</p> <p>18 Q. Were you engaged by Kotchen &amp; Low in the</p> <p>19 Cognizant case?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Did you submit a report in that case?</p> <p>22 <b>A. No.</b></p> <p>23 Q. And does that case concern the treatment of</p> <p>24 non-South Asian employees relative to South Asian</p> <p>25 employees?</p>	<p style="text-align: right;">Page 12</p> <p>1 Turning back to your report, is there any</p> <p>2 work that you did that analyzes the employment or hiring</p> <p>3 experience of non-Indian employees as distinct from</p> <p>4 non-South Asians?</p> <p>5 <b>A. I didn't distinguish.</b></p> <p>6 Q. Have you done any work in connection with this</p> <p>7 case that assesses whether Indians are a preferred group</p> <p>8 of employees relative to others?</p> <p>9 <b>A. I'm sorry, is that -- was it -- was the previous</b></p> <p>10 <b>question about this case or a general question?</b></p> <p>11 Q. Yeah, this is -- talk about this case.</p> <p>12 <b>A. I haven't looked at the difference between those</b></p> <p>13 <b>two questions. Sorry.</b></p> <p>14 MR. KING: Okay. Madam Court Reporter,</p> <p>15 would you mind reading that back.</p> <p>16 (Reporter clarification.)</p> <p>17 (The question was read as follows:</p> <p>18 "Question: Have you done any work in</p> <p>19 connection with this case that assesses whether Indians</p> <p>20 are a preferred group of employees relative to others?")</p> <p>21 <b>A. So what I meant, Mr. King, when you said relative</b></p> <p>22 <b>to others -- the previous question was Indians versus</b></p> <p>23 <b>non-South Asians.</b></p> <p>24 <b>So I'm trying to figure out if you are</b></p> <p>25 <b>asking me the same question or more general others.</b></p>

<p>Page 13</p> <p>1 Q. (BY MR. KING) Let me repeat.</p> <p>2 <b>A. Sure.</b></p> <p>3 Q. Have you done an analysis where you assessed</p> <p>4 whether Indians are a preferred group of employees</p> <p>5 relative to those who are not Indians?</p> <p>6 <b>A. I -- I have not studied Indians broken out from</b></p> <p>7 <b>other South Asians in any way because -- mainly because of</b></p> <p>8 <b>data limitations.</b></p> <p>9 Q. Okay. All right. If you recall from the motion</p> <p>10 for class certification, there's often a reference being</p> <p>11 made to South Asians/Indians. Did you notice that?</p> <p>12 <b>A. I -- I didn't, but it wouldn't surprise me</b></p> <p>13 <b>because, you know -- so when I said there's data</b></p> <p>14 <b>limitations, that has to do with the name matching.</b></p> <p>15 <b>There's not a distinction hard and fast that I can draw</b></p> <p>16 <b>between Indian and South Asian names.</b></p> <p>17 <b>The nationality data for the Visa workers</b></p> <p>18 <b>would indicate that, and I don't recall. I may have</b></p> <p>19 <b>looked at that. I don't recall, but it wouldn't surprise</b></p> <p>20 <b>me if the over -- if most of the South Asians are Indians.</b></p> <p>21 <b>So --</b></p> <p>22 Q. Right.</p> <p>23 <b>A. -- may be using -- because it's essentially the</b></p> <p>24 <b>same thing. It's virtually the same thing.</b></p> <p>25 Q. In your work it's identical, isn't it, because</p>	<p>Page 15</p> <p>1 Q. Right. Have you done any analysis of employees</p> <p>2 who work for Wipro but were not within the Wipro</p> <p>3 Technologies division?</p> <p>4 <b>A. Not -- not directly, but implicitly one can back</b></p> <p>5 <b>out the numbers from the two tables.</b></p> <p>6 Q. Right. Have you done that?</p> <p>7 <b>A. No.</b></p> <p>8 Q. Have you reached any conclusions about the</p> <p>9 treatment of employees who work for Wipro Limited but not</p> <p>10 within Wipro Technologies?</p> <p>11 <b>A. Not directly, no.</b></p> <p>12 Q. You mean not independently of others who work for</p> <p>13 Wipro Technologies?</p> <p>14 <b>A. I -- I have not done or reported analyses that</b></p> <p>15 <b>look only at the Wipro but non-Wipro Technologies</b></p> <p>16 <b>employees.</b></p> <p>17 Q. So as we sit here there is no way to know whether</p> <p>18 results reported for Wipro Limited employees simply</p> <p>19 reflect the treatment of employees within the Wipro</p> <p>20 Technologies division?</p> <p>21 <b>A. No, that's not correct.</b></p> <p>22 Q. How would -- okay. No. I interrupted you, so</p> <p>23 please continue.</p> <p>24 <b>A. I didn't know if you wanted to ask a follow up.</b></p> <p>25 <b>Because -- because I haven't -- I haven't --</b></p>
<p>Page 14</p> <p>1 there is no distinction being made between which</p> <p>2 South Asian country you originate from, correct?</p> <p>3 <b>A. There's no -- in my work there's no distinction</b></p> <p>4 <b>being made.</b></p> <p>5 Q. Right. Have you done any analysis of the</p> <p>6 treatment of South Asians who are not Indian relative to</p> <p>7 others in the -- employees of Wipro?</p> <p>8 <b>A. I mean, they're -- I mean, apart from schedule,</b></p> <p>9 <b>yes, but not separately. They're -- they're in the --</b></p> <p>10 Q. Yes.</p> <p>11 <b>A. They're -- they're in the group but not</b></p> <p>12 <b>acceptable. I did not -- have not broken out Indians from</b></p> <p>13 <b>other South Asians.</b></p> <p>14 Q. Thank you.</p> <p>15 You also did a comparison between the</p> <p>16 treatment of employees within Wipro versus the treatment</p> <p>17 of employees within Wipro Technologies, correct?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. So just to set the stage, so you did analyses of</p> <p>20 all Wipro employees, and you've done other analyses of</p> <p>21 employees of Wipro Technologies?</p> <p>22 <b>A. There -- there was a limited set of tables</b></p> <p>23 <b>that -- that essentially replicates some of the tables for</b></p> <p>24 <b>all of Wipro employees, just for Wipro Technologies</b></p> <p>25 <b>employees.</b></p>	<p>Page 16</p> <p>1 I mean, the numbers are in the table, so if I look at, you</p> <p>2 know, number of let's say -- you know, I have the shares,</p> <p>3 let's say for example in -- in table -- from memory, I</p> <p>4 think -- I think Table 2, but the table of, let's say,</p> <p>5 hiring by band for Wipro overall and hiring by band Wipro</p> <p>6 Technologies, sitting here -- is what you mean sitting</p> <p>7 here is could I get out my calculator or spreadsheet and</p> <p>8 calculate the difference between those.</p> <p>9 Yes, I would know -- I would know exactly wt</p> <p>10 the numbers were for Wipro tech- -- excuse me, for</p> <p>11 Wipro excluding Wipro Technologies, so sitting here today,</p> <p>12 there is a way to know that, yes.</p> <p>13 I just haven't reported it, and I haven't --</p> <p>14 I couldn't -- I could -- I could do shares with a</p> <p>15 calculator. I can't -- I couldn't -- I would have to take</p> <p>16 a little more work to do the physical test.</p> <p>17 Q. I don't mean to give you any more work, but if we</p> <p>18 look within the four corners of your report, there's not</p> <p>19 an analysis pertaining to solely Wipro Limited employees</p> <p>20 who are not within the Wipro Technologies division?</p> <p>21 <b>A. There's not -- there's not an analysis in my</b></p> <p>22 <b>report that breaks out that subset, correct.</b></p> <p>23 Q. Could you agree with me that non-South Asians</p> <p>24 constitute a significant share of the world's population?</p> <p>25 <b>A. Yes.</b></p>

<p>Page 17</p> <p>1 Q. Obviously South Asia is large, but it doesn't 2 encompass the world.</p> <p>3 <b>A. That's correct.</b></p> <p>4 Q. And if we focus only on non-South Asians, we 5 would know that they differ in terms of where they reside, 6 their religion, their race, et cetera, correct?</p> <p>7 <b>A. Well, they will differ in terms of where they 8 reside. I'm not an expert, but I know there's multiple 9 religions in India, and -- but -- well, if you really want 10 to get into race, we can, but I -- I think they're all the 11 same race, but that's a -- I'm not sure we need to parse.</b></p> <p>12 Q. Right. So my next question is whether you 13 performed any analyses with respect to non-South Asians 14 that distinguishes in any way based upon the nationality 15 or ethnicity of a group of non-South Asians?</p> <p>16 <b>A. Sorry, can you -- can you -- can you repeat the 17 question?</b></p> <p>18 Q. Yeah, let me break it down.</p> <p>19 <b>A. Sure.</b></p> <p>20 Q. Non-South Asians consist of persons of various 21 nationalities, correct?</p> <p>22 <b>A. Correct.</b></p> <p>23 Q. Okay. Have you done any analyses of how those 24 employees fair relative to South Asians?</p> <p>25 <b>A. So you're asking me among -- I mean, you asked me</b></p>	<p>Page 19</p> <p>1 their nationality, correct?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Okay. Did you do any analyses that is unique to 4 any of those nationalities in the non-South Asian bucket?</p> <p>5 <b>A. There's nothing in the report. There's -- very 6 early on -- and I -- I -- I can't point to any exhibit 7 because this is just sort of early -- early -- very early 8 stage, looking at the data, trying to see what I have, 9 et cetera, you know.</b></p> <p>10 <b>The people who are either non-South Asian or 11 non-American, just talking nationality here, are -- 12 there's very few of them. There's a smattering from this 13 country and that. So -- but I didn't do anything more 14 than that.</b></p> <p>15 Q. Right. You didn't compare their hire rates or 16 their termination rates or their promotion rates to 17 South Asians?</p> <p>18 <b>A. You mean like French -- like the French to the 19 South Asians?</b></p> <p>20 Q. Yeah, yeah. And the answer would be the same for 21 every other nationality that's represented within Wipro, 22 apart from the South Asians?</p> <p>23 <b>A. The answer would be the same. My -- my strong 24 supposition based on a little -- a little -- early look of 25 the data, but again, I don't remember all the details,</b></p>
<p>Page 18</p> <p>1 <b>this question -- this sort of funny question about the 2 world population, which is not at issue here. The issue 3 is the Wipro -- the Wipro workforce. You're asking me if 4 I broke out the Wipro US workforce by, let's say, black, 5 white and Latino?</b></p> <p>6 Q. That's one possibility. Yes. Have you done 7 that?</p> <p>8 <b>A. I have not.</b></p> <p>9 Q. Have you done it by the nationality of the 10 non-South Asian employees of Wipro?</p> <p>11 <b>A. The non-US nationality?</b></p> <p>12 Q. No.</p> <p>13 <b>A. You mean the nationality of other Visa workers?</b></p> <p>14 Q. No. Let's -- let's start over, okay?</p> <p>15 <b>A. Okay.</b></p> <p>16 Q. So we can divide all Wipro employees into the 17 groups of South Asian and non-South Asian, correct?</p> <p>18 <b>A. Based on nationality, yes. I mean, in the -- in 19 the data, yes.</b></p> <p>20 Q. Right. Everybody belongs in one bucket or the 21 other?</p> <p>22 <b>A. They -- they don't have it recorded but, yes, 23 most of them do.</b></p> <p>24 Q. Okay. Let's look at the non-South Asian bucket. 25 Employees in the non-South Asian bucket differ in terms of</p>	<p>Page 20</p> <p>1 <b>would be -- those would be very small groups, except for 2 the Americans.</b></p> <p>3 Q. Okay. In terms of the treatment of equally small 4 groups though, you have no analysis in your report 5 regarding how they fared, correct?</p> <p>6 <b>A. That's right.</b></p> <p>7 Q. In defining South Asian, the people that you 8 determine to be South Asian are defined in terms of their 9 nationality, number 1, and the likeness of their names to 10 others with those nationalities?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. So everything you've done to classify employees 13 begins with a cat- -- categorization according to 14 nationality?</p> <p>15 <b>A. That's right. The way the -- not everything. A 16 large part of my -- let's start with nationality, and I -- 17 and that generates a list of names of people from 18 South Asian countries, and I list those countries in the 19 report.</b></p> <p>20 <b>I also though recall used names from a 21 couple other sources. So -- so matching those to names of 22 Wipro employees and classifying them does not require 23 having the Wipro nationality data.</b></p> <p>24 Q. Right. Although they're all methods that are 25 nationality based rather than ethnic -- ethnically based</p>



<p style="text-align: right;">Page 21</p> <p>1 or racially based?</p> <p>2 <b>A. Yeah. I think -- I'm not quite sure I agree with</b></p> <p>3 <b>that question because -- with that premise because that --</b></p> <p>4 <b>I mean, one of the studies uses Social Security records --</b></p> <p>5 <b>I mean, it's for America, right?</b></p> <p>6 <b>Q. Uh-huh.</b></p> <p>7 <b>A. And I -- if I have -- if I'm recalling correctly,</b></p> <p>8 <b>where your parents were born. So if my parents were born</b></p> <p>9 <b>in India and I live here, am I -- I mean, that's -- I</b></p> <p>10 <b>mean, again -- we can argue about terms forever. I think</b></p> <p>11 <b>that that becomes my ethnicity, not my nationality, but,</b></p> <p>12 <b>you know, you can interpret it how you want.</b></p> <p>13 <b>Q. Yeah. As a -- as a literal matter, it is your</b></p> <p>14 <b>national origin, correct?</b></p> <p>15 <b>A. If my parents were born somewhere else and I was</b></p> <p>16 <b>born here, I think I'm an American of India ethnicity. I</b></p> <p>17 <b>mean, I don't know. If my parents were born in India --</b></p> <p>18 <b>if my parents immigrated from India and I'm born here? I</b></p> <p>19 <b>don't know. I'd -- I would say my parents' national</b></p> <p>20 <b>origin is Indian, and mine is American, but I'm of India</b></p> <p>21 <b>ethnicity, which is more of an identification issue than</b></p> <p>22 <b>a -- I'm not an expert in, you know, these -- you know,</b></p> <p>23 <b>this -- ask an anthropologist.</b></p> <p>24 <b>Q. Right. Let's move on. Please turn to page 1 of</b></p> <p>25 <b>your report.</b></p>	<p style="text-align: right;">Page 23</p> <p>1 <b>average earnings of -- of men and women in -- in a -- in a</b></p> <p>2 <b>big US dataset, let's say. There's no reason to think</b></p> <p>3 <b>that that gap is necessarily all discrimination even</b></p> <p>4 <b>though some people incorrectly interpret it that way,</b></p> <p>5 <b>right?</b></p> <p>6 <b>There could be differences in how much</b></p> <p>7 <b>people work, how many hours, so maybe we're looking at</b></p> <p>8 <b>annual earnings and not adjusting for that. There could</b></p> <p>9 <b>be differences in how much education people have.</b></p> <p>10 <b>That's actually something that would make it</b></p> <p>11 <b>bigger because women these days are more educated than</b></p> <p>12 <b>men. There could -- you know, there's -- there's a</b></p> <p>13 <b>variety of things that could explain it. Some could make</b></p> <p>14 <b>it bigger, some could make it smaller.</b></p> <p>15 <b>And the context of that particular question,</b></p> <p>16 <b>when you account for other factors, I think most people</b></p> <p>17 <b>would agree the gap -- the gap -- the overall gap is --</b></p> <p>18 <b>you know, overstates a discriminatory gap and the gap</b></p> <p>19 <b>attributable to discrimination is smaller than that raw</b></p> <p>20 <b>gap would indicate.</b></p> <p>21 <b>That doesn't necessarily -- that's -- that's</b></p> <p>22 <b>one specific example. It may or may not apply to other</b></p> <p>23 <b>context, other firms, et cetera.</b></p> <p>24 <b>Q. Sure. So in your example, the failure to account</b></p> <p>25 <b>for what we would call nondiscriminatory reasons could</b></p>
<p style="text-align: right;">Page 22</p> <p>1 <b>A. It is it okay if I use paper?</b></p> <p>2 <b>Q. Oh, yeah, you can do whatever you'd like. It's</b></p> <p>3 <b>the one that has "Introduction" at the top.</b></p> <p>4 <b>A. Yes.</b></p> <p>5 <b>Q. So we're beginning in the same place.</b></p> <p>6 <b>A. Yeah.</b></p> <p>7 <b>Q. I'd like you to look at the last sentence of the</b></p> <p>8 <b>first paragraph.</b></p> <p>9 <b>A. Okay.</b></p> <p>10 <b>Q. And you say "The goal of much of this</b></p> <p>11 <b>research" -- meaning the research you cite above -- "is to</b></p> <p>12 <b>better understand the role of discrimination versus other</b></p> <p>13 <b>explanations of differences in labor market outcomes by</b></p> <p>14 <b>sex, age, race, or ethnicity."</b></p> <p>15 <b>Did I read that right?</b></p> <p>16 <b>A. Yes.</b></p> <p>17 <b>Q. Okay. And what do you mean by that?</b></p> <p>18 <b>A. What I mean by that is -- is that -- let's say a</b></p> <p>19 <b>concrete example, and you can ask me more general if you</b></p> <p>20 <b>want. You know, we --</b></p> <p>21 <b>Q. Sure.</b></p> <p>22 <b>A. We often hear that women are 69 or 70 or \$0.72 on</b></p> <p>23 <b>the dollar, whatever -- whatever the current number is.</b></p> <p>24 <b>Q. Yes.</b></p> <p>25 <b>A. That's a fact, right? If you -- if you look at</b></p>	<p style="text-align: right;">Page 24</p> <p>1 <b>lead to a biased conclusion about the magnitude of this</b></p> <p>2 <b>gender pay gap that you just described?</b></p> <p>3 <b>A. Yes.</b></p> <p>4 <b>Q. As an economist, you would want to take into</b></p> <p>5 <b>account these nondiscriminatory reasons before concluding</b></p> <p>6 <b>that the gap between men and women is X percent or perhaps</b></p> <p>7 <b>nonexistent?</b></p> <p>8 <b>A. If I was -- if I was -- if I was doing an</b></p> <p>9 <b>academic research with the goal of a paper -- my papers</b></p> <p>10 <b>let's say because I've done a lot of them, I try to</b></p> <p>11 <b>research a definitive conclusion based on the data I have.</b></p> <p>12 <b>I would want to -- I would want to</b></p> <p>13 <b>account -- you have to be careful, you don't want to</b></p> <p>14 <b>account for things that potentially reflect</b></p> <p>15 <b>discrimination, like a bias performance rating or</b></p> <p>16 <b>something like that. But you'd want to try to account for</b></p> <p>17 <b>things that appropriately controlled for other sources of</b></p> <p>18 <b>the gap analysis.</b></p> <p>19 <b>Q. The failure to include these other considerations</b></p> <p>20 <b>that you just described is often referred to as -- this</b></p> <p>21 <b>constellation of facts that they're not considered may be</b></p> <p>22 <b>considered what's called omitted variables?</b></p> <p>23 <b>MR. LOW: Object to the misstated testimony.</b></p> <p>24 <b>Go ahead.</b></p> <p>25 <b>Q. (BY MR. KING) Are you comfortable with that</b></p>

<p>Page 25</p> <p>1 characterization?</p> <p>2 A. Yes. I mean, that -- that's -- yes, except --</p> <p>3 except it -- you know, it's a more -- it -- it -- there's</p> <p>4 a more nuance -- there's a more nuance set of</p> <p>5 considerations that have to be given as to, you know, what</p> <p>6 should be -- you know, there may be some things you omit</p> <p>7 because they should be omitted, like something that</p> <p>8 self-reflects discrimination.</p> <p>9 I mean, for -- let me give you an example in</p> <p>10 this context. So you might say, Well, you know, if I</p> <p>11 control for the occupations men and women work in -- and</p> <p>12 now I'm talking about a general dataset, not -- you know,</p> <p>13 not a company dataset like we're talking about here.</p> <p>14 Women on average working lower paying</p> <p>15 occupations, so I've controlled for occupation, the gender</p> <p>16 gap gets smaller. But some believe that there is</p> <p>17 discrimination against women into hiring into higher paid</p> <p>18 occupations.</p> <p>19 So literally occupation is omitted from the</p> <p>20 wage progression if you don't include it because that's --</p> <p>21 you know, it's an omitted variable, but arguably you</p> <p>22 don't -- you don't want to include it because then you're</p> <p>23 essentially what we call over-controlling. You're --</p> <p>24 you're essentially controlling for the discrimination via</p> <p>25 occupation even though it contributes to the pay gap.</p>	<p>Page 27</p> <p>1 but my understanding is there -- there -- there -- there</p> <p>2 are more rounds at which nondiscriminatory explanation may</p> <p>3 or may not be preferred by the defendant, you know,</p> <p>4 presumably based on the same data I have or I guess that's</p> <p>5 not allowed, and then I'll you know -- I will consider,</p> <p>6 you know -- consider that evidence on rebuttal.</p> <p>7 It's also the case that, you know -- my</p> <p>8 understanding is that -- that some of the -- some of the</p> <p>9 variables you're referring to that might, you know -- that</p> <p>10 may be -- if -- if I were, you know, not just documenting</p> <p>11 disparities at the outset, but -- but considering possible</p> <p>12 other explanations, which I haven't done in this report,</p> <p>13 were things that Wipro declined to provide data on, such</p> <p>14 as performance appraisals.</p> <p>15 Now, again, would I have taken performance</p> <p>16 appraisals at -- at face value? Maybe, maybe not, but</p> <p>17 without getting into that, these data simply weren't made</p> <p>18 available.</p> <p>19 Q. So it's your view that you did not have access to</p> <p>20 data regarding performance?</p> <p>21 A. Yes.</p> <p>22 Q. If you did, you would have considered it.</p> <p>23 A. I would have considered it. That's a general</p> <p>24 statement. I'm -- I'm -- I'm not committing to what I</p> <p>25 would have done with it.</p>
<p>Page 26</p> <p>1 Q. Is it correct that what and -- how it's like</p> <p>2 yourself decides should be included in the model or</p> <p>3 described as the model specification?</p> <p>4 A. Yes.</p> <p>5 Q. And if it -- there is a consideration that is</p> <p>6 included in this specification but is unavailable or for</p> <p>7 some reason is absent from the model, would that be</p> <p>8 considered a specification error?</p> <p>9 A. So now you're drawing the distinction between</p> <p>10 what you generically called omitted variables and</p> <p>11 something that I think should be in the model, but I don't</p> <p>12 have data.</p> <p>13 Q. That's exactly right.</p> <p>14 A. Yeah. I mean, I can't -- I can't -- yeah, I</p> <p>15 can't -- I can't include things I don't have data on. I</p> <p>16 should point out that -- I should take two things to</p> <p>17 clarify the outset you may -- you know, this may be where</p> <p>18 you're going.</p> <p>19 First of all, there is a difference -- I</p> <p>20 mean, you know, you pulled out page 1 of my report which</p> <p>21 is discussion of my academic research. There's -- there's</p> <p>22 an important distinction between what I say here about my</p> <p>23 research and what I'm doing at this stage of this case,</p> <p>24 which is documenting disparities.</p> <p>25 And my understanding is -- I'm not a lawyer,</p>	<p>Page 28</p> <p>1 Q. Fair enough.</p> <p>2 Did you form any conclusions about what you</p> <p>3 might call the locus of decision making. In other words,</p> <p>4 where or who at Wipro is responsible for making hiring</p> <p>5 decisions. Do you know?</p> <p>6 A. I was not -- I -- I was not asked to consider</p> <p>7 that, and I didn't. I didn't form any opinions about it</p> <p>8 because of that.</p> <p>9 Q. Same question with respect to promotions. Do you</p> <p>10 know who decides whether to promote a given employee?</p> <p>11 A. No. I was -- I was asked here to perform the</p> <p>12 statistical analysis of -- of the -- the outcome, not --</p> <p>13 not to delve into what I could or couldn't learn, and --</p> <p>14 and you can't from the data I have about the questions of</p> <p>15 who's making the decisions and how -- the internal</p> <p>16 operations of the company.</p> <p>17 Q. Okay. Same thing with terminations. Do you know</p> <p>18 who makes termination decisions?</p> <p>19 A. No.</p> <p>20 Q. But you reached conclusions regarding the</p> <p>21 presence of discrimination, and those are meant to apply</p> <p>22 throughout the company, correct?</p> <p>23 A. I reached conclusions that the data are -- I --</p> <p>24 I -- I'm pretty sure I say every time consistent or</p> <p>25 strongly consistent with discrimination, and that's a</p>



<p style="text-align: right;">Page 29</p> <p><b>1 statement about the statistics.</b></p> <p>2 Q. Right. But it's -- it's a statistic that applies</p> <p>3 company wide and is not specific to any division within</p> <p>4 the company, apart from Wipro Technologies, or any</p> <p>5 location within the company?</p> <p>6 A. There's -- there's nothing in my analysis by</p> <p>7 location or division except for the -- the one distinction</p> <p>8 you drew, if you want to call Wipro Technologies a</p> <p>9 division. There is -- there are other -- there are other</p> <p>10 dimensions of this segregation like Career Band.</p> <p>11 Q. Yeah.</p> <p>12 A. It -- it doesn't solely come from a pooled</p> <p>13 analysis of either Wipro overall or Wipro Technologies</p> <p>14 overall.</p> <p>15 Q. So if my interest was in learning how pervasive</p> <p>16 your finding of discrimination or consistency with</p> <p>17 discrimination is and I wanted to know, does it pervade</p> <p>18 all locations, your report would not provide guidance with</p> <p>19 respect to that?</p> <p>20 A. I don't have -- no, there's no direct evidence of</p> <p>21 that, and it's important to understand though that, you</p> <p>22 know, when you test the statistical significance of an</p> <p>23 estimate, right, and something is strongly significant, I</p> <p>24 mean, that is telling you something about, you know --</p> <p>25 that it's -- it doesn't go -- it doesn't go in one</p>	<p style="text-align: right;">Page 31</p> <p><b>1 statistically significant result in the aggregate saying</b></p> <p><b>2 that there's -- there's a strong differential favoring</b></p> <p><b>3 South Asians.</b></p> <p>4 I mean, could there be some var- -- you</p> <p>5 know, would you get the same estimate, division by</p> <p>6 division, location by location? Of course not. Just like</p> <p>7 if I flip a coin ten times and flip it another ten times,</p> <p>8 I'm not going to get the exact same fraction.</p> <p>9 But all I'm saying is it's not -- it's not,</p> <p>10 you know -- you learn something about how little or much</p> <p>11 an estimate varies from its statistical significance.</p> <p>12 Q. Well, let's suppose I was interested in assessing</p> <p>13 whether the differential you report in your report</p> <p>14 characterize each and every state throughout the country.</p> <p>15 There's nothing in your report that would</p> <p>16 allow me to conclude whether it is present in 10 states,</p> <p>17 5 states or even 55 states, correct?</p> <p>18 55 -- let's not go to 55. That would be a</p> <p>19 little extreme, okay? Let's say I meant to say 26 states.</p> <p>20 A. There's -- there's -- there's nothing about that</p> <p>21 directly. If one looked at the distribution of employment</p> <p>22 by state, which I haven't done, and most of the employment</p> <p>23 was in a couple of states, you'd be pretty sure where it</p> <p>24 was all coming from, but there's nothing in that</p> <p>25 direction.</p>
<p style="text-align: right;">Page 30</p> <p><b>1 direction in half the company and the other direction in</b></p> <p><b>2 the other half of the company.</b></p> <p>3 I mean, that is -- you know, I -- I often</p> <p>4 see experts say, Oh, you know, there's -- defense experts</p> <p>5 I should say. There's variations you haven't explained,</p> <p>6 and therefore, you know, this can't -- this can't tell the</p> <p>7 whole story, and my answer is no.</p> <p>8 Then the statistical test doesn't -- it</p> <p>9 doesn't -- it doesn't -- it doesn't literally do what you</p> <p>10 say, run a model location by location, division by</p> <p>11 division or something, but it does speak -- it does</p> <p>12 address the commonality of the evidence in that there's a</p> <p>13 strong statistical pattern.</p> <p>14 Q. Well, there's a strong statistical difference</p> <p>15 between the average treatment of South Asians and the</p> <p>16 average treatment of non-South Asians, correct?</p> <p>17 A. Correct. But it -- but it let's say -- let's</p> <p>18 take -- well, let's take a term- -- just to name it --</p> <p>19 let's take involuntary termination.</p> <p>20 If, in fact, the -- the difference between</p> <p>21 involuntary termination rates between South Asians and</p> <p>22 non-South Asians varied a lot by location and varied a lot</p> <p>23 by division, and in some divisions, it went one way that</p> <p>24 is favoring non-South Asians and other divisions it went</p> <p>25 the other way and the same by location, you wouldn't get a</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Okay. And in the same vein, you did not</p> <p>2 determine whether the relevant labor market for Wipro</p> <p>3 employees differs in its ethnic makeup or racial makeup,</p> <p>4 however you describe it as, by location?</p> <p>5 A. I did not do a location by location analysis.</p> <p>6 THE REPORTER: Mr. King?</p> <p>7 MR. KING: Yes?</p> <p>8 THE REPORTER: Can we go off the record for</p> <p>9 just a second?</p> <p>10 VIDEOGRAPHER: And we are going off the</p> <p>11 record at 10:42.</p> <p>12 (Recess taken from 10:42 a.m. to 10:47 a.m.)</p> <p>13 VIDEOGRAPHER: We are back on the record at</p> <p>14 10:40 -- can you hear me? Back on the record at 10:47.</p> <p>15 You may proceed.</p> <p>16 Q. (BY MR. KING) Dr. Neumark, please turn to page 2</p> <p>17 of your report, paragraph 4. I'd like to look at</p> <p>18 paragraph 4a.</p> <p>19 A. Okay.</p> <p>20 Q. Okay. How did you determine to focus on</p> <p>21 employment, promotions and terminations?</p> <p>22 A. I mean, I'm trying to understand -- you know --</p> <p>23 you know, these are the -- I'm trying to understand the --</p> <p>24 what -- what shapes employment at the company and -- and</p> <p>25 there's hiring obviously, and, you know, you come to a</p>

<p style="text-align: right;">Page 33</p> <p>1 company and you leave the company, and while you're at the</p> <p>2 company, you move up or not, and those are pretty much the</p> <p>3 way -- I mean, this is not a pay case.</p> <p>4       So aside from pay, those are pretty much the</p> <p>5 things we study and, you know -- and -- and I mean, there</p> <p>6 was certainly guidance from the attorneys about what</p> <p>7 questions were of interest.</p> <p>8       How I -- how I study the questions are, of</p> <p>9 course, up to me. I don't -- I don't make up the</p> <p>10 questions.</p> <p>11       Q. So you were asked to look at overall employment</p> <p>12 as one issue?</p> <p>13       A. Yeah.</p> <p>14       Q. Okay. Did you raise an issue or raise a question</p> <p>15 rather as to whether this is to be done on an aggregated</p> <p>16 basis or whether you were to determine the pervasiveness</p> <p>17 you might say across locations or business units with</p> <p>18 respect to employment, promotions or termination?</p> <p>19       A. I did not raise that question at this point.</p> <p>20       Q. Okay. Okay. You also say as one of your</p> <p>21 questions is whether the data is consistent with</p> <p>22 discrimination. You see that?</p> <p>23       A. I do.</p> <p>24       Q. Okay. Did you take it upon yourself to determine</p> <p>25 whether the data were also consistent with</p>	<p style="text-align: right;">Page 35</p> <p>1 I've never -- I've never -- I've never seen data where,</p> <p>2 you know, some control hurdles -- someone might come up</p> <p>3 with that are going to explain disparities like these, but</p> <p>4 I've not done it directly, no.</p> <p>5       Q. In subparagraph B under -- looking at 4(b),</p> <p>6 you're asking whether "the data on Wipro's hiring,</p> <p>7 promotions, and terminations within certain Career Bands</p> <p>8 are consistent with discrimination in favor of</p> <p>9 South Asians and against non-South Asians?"</p> <p>10       Is everything you said with respect to 4a</p> <p>11 also true about 4(b), that at this juncture, you did</p> <p>12 formally consider alternative hypotheses to</p> <p>13 discrimination?</p> <p>14       A. Yes, but I -- I guess I would add an important</p> <p>15 point, which is that, you know, in a sense looking</p> <p>16 Career Band by Career Band is in -- is in a sense like</p> <p>17 introducing a control variable.</p> <p>18       For example -- I'll give you an example. If</p> <p>19 I was studying an overall promotions difference, right?</p> <p>20 So suppose -- suppose -- you know, suppose I -- the</p> <p>21 overall data on whether one is promoted or not, I might</p> <p>22 find, let's say, you know -- I'll just give you a</p> <p>23 hypothetical: No promotion difference between</p> <p>24 South Asians and non-South Asians, not what I find, but</p> <p>25 just to give you a hypothetical.</p>
<p style="text-align: right;">Page 34</p> <p>1 nondiscriminatory explanations?</p> <p>2       A. As I indicated my -- my -- my -- my goal at this</p> <p>3 point -- I mean, my -- my main goal was to simply document</p> <p>4 whether there were disparities in outcomes, understanding</p> <p>5 that there may be future changes on what else could</p> <p>6 explain it.</p> <p>7       Had I had rich data with which to explore</p> <p>8 that, I would have -- I would have -- I would have at</p> <p>9 least pushed to do that or asked to do it. They might</p> <p>10 have said don't do it at this stage anyways, but it wasn't</p> <p>11 relevant.</p> <p>12       But, yeah -- you know, but I</p> <p>13 have certainly -- certainly my research always in other</p> <p>14 reports, depending on the data I have available, you</p> <p>15 know -- either at this point or at a later point certainly</p> <p>16 looked at the extent to which I could decisively rule out</p> <p>17 other explanations.</p> <p>18       And that's why I use the language I use</p> <p>19 here, to make clear that I have, you know -- that that's</p> <p>20 where I am right now. I -- I've documented disparities.</p> <p>21 Disparities are consistent with discrimination.</p> <p>22       Q. But at this juncture, you have not made efforts</p> <p>23 to rule out other explanations for the same disparities?</p> <p>24       A. I have not done anything directly. I will tell</p> <p>25 you these disparities are huge, and in my vast experience,</p>	<p style="text-align: right;">Page 36</p> <p>1       Q. Uh-huh.</p> <p>2       A. Now, I might -- one thing I might do is add into</p> <p>3 the model a control for which band I would -- and talking</p> <p>4 about a hierarchal band here -- which band you're in, and</p> <p>5 the reason I would do that is because typically in an</p> <p>6 organization, promotion rates are lower at lower levels of</p> <p>7 the structure than at higher levels of the structures.</p> <p>8       So if south -- if non-South Asians are lower</p> <p>9 level and South Asians are higher levels, which is in fact</p> <p>10 the case here, the -- you know, within band promotion rate</p> <p>11 would be a lot higher for South Asians, but if you looked</p> <p>12 at the aggregate, you could mis-seemingly get no evidence</p> <p>13 of higher promotions for South Asians.</p> <p>14       This aggregating by Career Band is which</p> <p>15 is sometimes a richer, more flexible way to -- to capture</p> <p>16 that than -- than just running a single promotion model</p> <p>17 with a control for which band you're in.</p> <p>18       Q. You're aggregating along that dimension of</p> <p>19 Career Band. You haven't disaggregated the data in any</p> <p>20 other --</p> <p>21       THE REPORTER: Mr. King, can you repeat that</p> <p>22 question? You cut out.</p> <p>23       MR. KING: Yeah, I'm -- I'm really sorry</p> <p>24 about the communications issue.</p> <p>25       Q. (BY MR. KING) Let me ask the question again.</p>

<p style="text-align: right;">Page 37</p> <p>1 We're still looking at section 4(b), and my question is:</p> <p>2 Apart from considering outcomes by Career Band, you</p> <p>3 haven't done other analyses to determine the pervasiveness</p> <p>4 of any of those that you found?</p> <p>5 MR. LOW: Objection, ambiguous.</p> <p>6 <b>A. There are some results by year, although not by</b></p> <p>7 <b>year ending, and there are results for Wipro -- overall</b></p> <p>8 <b>Wipro Technologies, so those are two different types of</b></p> <p>9 <b>disaggregation I report.</b></p> <p>10 Q. (BY MR. KING) Those are the only two?</p> <p>11 <b>A. I think that's correct, yes.</b></p> <p>12 Q. In your summary of findings in paragraph 7, the</p> <p>13 first sentence says "Wipro's share of employment that is</p> <p>14 South Asian far exceeds the shares of South Asian in the</p> <p>15 relevant workforce."</p> <p>16 How did you determine the relevant</p> <p>17 workforce?</p> <p>18 <b>A. So I -- I -- I take data from the American</b></p> <p>19 <b>Community Survey. It's a very large, random sample of the</b></p> <p>20 <b>US population workforce, same years that I use Wipro data</b></p> <p>21 <b>for. I take data on the industry, as best as I could</b></p> <p>22 <b>match it, that Wipro operates in.</b></p> <p>23 <b>And I take -- so I take that subset of the</b></p> <p>24 <b>data from ACS. I further take the subset of the same</b></p> <p>25 <b>occupation that are representative of Wipro, to the best I</b></p>	<p style="text-align: right;">Page 39</p> <p>1 actual hires by Wipro of employees of various</p> <p>2 nationalities to the presence of those nationalities in</p> <p>3 the relevant US workforce, or would you consider a global</p> <p>4 labor market to be more appropriate given what you know</p> <p>5 about Wipro?</p> <p>6 <b>A. We're talking about hiring in the US?</b></p> <p>7 Q. Yes, yes.</p> <p>8 <b>A. I mean, again, this is a -- this is a legal</b></p> <p>9 <b>question, I think, what exactly hiring discrimination</b></p> <p>10 <b>means when you're bringing in people on Visas from other</b></p> <p>11 <b>countries.</b></p> <p>12 <b>I think there's a very reasonable argument</b></p> <p>13 <b>to be made that you should be -- you should be doing the</b></p> <p>14 <b>comparisons to the US labor market, not the global labor</b></p> <p>15 <b>market because that's -- that's the -- that's the hiring</b></p> <p>16 <b>scenario.</b></p> <p>17 <b>Here's -- here's an example: You know,</b></p> <p>18 <b>suppose I have an -- an office -- my company has one</b></p> <p>19 <b>office, and it's in Boise. And I pick, you know, Boise,</b></p> <p>20 <b>Idaho, because I think it's a largely white population.</b></p> <p>21 <b>Let's assume that's true. And now I open a second office</b></p> <p>22 <b>in Atlanta, which has a very large black population and,</b></p> <p>23 <b>you know, highly educated, qualified, a large -- large</b></p> <p>24 <b>black professional class, let's focus on that kind of an</b></p> <p>25 <b>office.</b></p>
<p style="text-align: right;">Page 38</p> <p>1 can match those. And that's -- that's when I try -- I'm</p> <p>2 trying to think of anything else. That's what I treat as</p> <p>3 the relevant workforce.</p> <p>4 Q. Okay. And the American Community Survey is a</p> <p>5 survey of employment in the United States, correct?</p> <p>6 <b>A. Sure.</b></p> <p>7 Q. Why would -- what facts cause you to believe that</p> <p>8 the United States labor market is descriptive of the</p> <p>9 relevant labor market from which Wipro hires?</p> <p>10 <b>A. Well, I'm -- I'm -- I'm studying Wipro's behavior</b></p> <p>11 <b>in the US labor market. I'm not studying the behavior in</b></p> <p>12 <b>other countries. So if you -- if the question -- if the</b></p> <p>13 <b>question -- this is a legal question perhaps, which I</b></p> <p>14 <b>can't opine on.</b></p> <p>15 <b>But my understanding of the question is what</b></p> <p>16 <b>are they doing in the US labor market and -- and -- and --</b></p> <p>17 <b>and how does that compare to what -- what would -- what is</b></p> <p>18 <b>going on in the rest of the US labor market, so called</b></p> <p>19 <b>relevant workforce.</b></p> <p>20 Q. Suppose we are considering the hiring patterns or</p> <p>21 practices at Wipro. Can we focus on that?</p> <p>22 <b>A. Sure.</b></p> <p>23 Q. Okay. Would it be appropriate to compare the</p> <p>24 actual hires made by Wipro to -- let me scratch that.</p> <p>25 Would it be appropriate to compare the</p>	<p style="text-align: right;">Page 40</p> <p>1 <b>I open an office, and instead of hiring</b></p> <p>2 <b>people from Atlanta, I just keep bringing -- you know,</b></p> <p>3 <b>some of whom will be minority, if I'm -- if I'm doing</b></p> <p>4 <b>nondiscriminatory hiring, some will be black. I just keep</b></p> <p>5 <b>bringing people from Boise, Idaho, to staff that office.</b></p> <p>6 <b>Would I as a labor economist -- not as a</b></p> <p>7 <b>judge -- as a labor economist view that as hiring</b></p> <p>8 <b>discrimination? Yeah, I would. And I think that's a good</b></p> <p>9 <b>analogy.</b></p> <p>10 Q. So are you suggesting that the sources from which</p> <p>11 Wipro hires is itself a reflection of discrimination?</p> <p>12 <b>A. You mean the fact that they could hire Indians</b></p> <p>13 <b>when you "say the sources"?</b></p> <p>14 Q. I thought the example you gave was created for a</p> <p>15 point that an employer who reaches beyond the local labor</p> <p>16 market could be doing so for discriminatory reasons?</p> <p>17 <b>A. Well, the -- the -- the point of my example is</b></p> <p>18 <b>I'm looking at hiring in this new Atlanta office, and that</b></p> <p>19 <b>Atlanta hiring -- and in fact I'm just bringing in white</b></p> <p>20 <b>people from Boise, that Atlanta hiring -- that office is</b></p> <p>21 <b>going to look very white whereas local hiring would</b></p> <p>22 <b>have -- would have a higher representation of blacks.</b></p> <p>23 <b>So it's really about -- that's -- that's why</b></p> <p>24 <b>I asked you -- it's not so much about the source. It's</b></p> <p>25 <b>about, Is my hiring on location, right, reflective of the</b></p>

<p style="text-align: right;">Page 41</p> <p>1 local labor market? And I -- and that's -- that's the</p> <p>2 analogy to what I'm doing here. I'm asking is Wipro's</p> <p>3 hiring -- it's employment, it's not hiring, but is Wipro's</p> <p>4 hiring in the US comparable or not in terms of South Asian</p> <p>5 to the local labor market, which I'm defining broadly here</p> <p>6 as the US labor market, you know, by -- by industry and</p> <p>7 occupation.</p> <p>8 Q. Right. You recognize that most companies have to</p> <p>9 select their employees from those who apply for positions?</p> <p>10 A. Well, yes, but companies also engage in a lot of</p> <p>11 recruiting efforts that shape who applies, and I don't</p> <p>12 know -- I -- so that matters too.</p> <p>13 Q. Right. Employees have no way to coerce someone</p> <p>14 who doesn't apply to go to work, right?</p> <p>15 A. There's no way to coerce anyone to work for them,</p> <p>16 even if they do apply.</p> <p>17 Q. Right. So the group who apply for positions are</p> <p>18 often referred to as "the applicant flow." Isn't that</p> <p>19 correct?</p> <p>20 A. That is correct. My -- my point is simply the</p> <p>21 applicant flow is not, you know, fixed by nature.</p> <p>22 Q. Right.</p> <p>23 A. Right. I can -- I can go look for Indian Visa</p> <p>24 workers or I can go recruit on American engineering</p> <p>25 campuses. That's a choice.</p>	<p style="text-align: right;">Page 43</p> <p>1 about the motion the attorneys are writing. It's not my</p> <p>2 job, but I did not realize there was not going to be any</p> <p>3 reference in the claim to the employment differentials,</p> <p>4 but obviously, I knew that was being shaped by</p> <p>5 terminations that I was studying.</p> <p>6 Q. Okay. That being true, why did you include a</p> <p>7 section in your report discussing hiring when you knew</p> <p>8 that was not part of the case?</p> <p>9 MR. LOW: Objection, misstates his</p> <p>10 testimony.</p> <p>11 A. I think -- I think that did misstate my</p> <p>12 testimony. I said I wasn't -- I -- I knew I had no -- I</p> <p>13 just said I -- I -- I knew I had no direct analysis of</p> <p>14 hiring out of applications, and I have no -- no analysis</p> <p>15 like that, and I just said that I wasn't aware that there</p> <p>16 was not going to be any reference in the motion to hiring,</p> <p>17 even though it might be drawn somewhat -- an inference</p> <p>18 might be drawn somewhat indirectly from the employment</p> <p>19 data.</p> <p>20 MR. KING: Can we take a five-minute break</p> <p>21 if you don't mind?</p> <p>22 VIDEOGRAPHER: Going off the record at</p> <p>23 11:05.</p> <p>24 (Recess taken from 11:05 a.m. to 11:16 a.m.)</p> <p>25 THE VIDEOGRAPHER: And we are back on the</p>
<p style="text-align: right;">Page 42</p> <p>1 Q. Right. But you don't know that that kind of</p> <p>2 selectivity has occurred in this case, do you?</p> <p>3 A. I have -- I have not studied the applicant flow</p> <p>4 data. As far as I understand, the case isn't even about</p> <p>5 hiring. It's about promotions and terminations, for which</p> <p>6 this, you know, has no bearing.</p> <p>7 Q. Yeah. When did you learn that, by the way, that</p> <p>8 the case is not about hiring?</p> <p>9 A. Well, I knew it was -- I -- I -- I knew it was</p> <p>10 not directly about hiring because there's no -- as I point</p> <p>11 out in my report, there's no direct information about</p> <p>12 hiring out of an applicant pool, and I explain -- I</p> <p>13 explain why in my report.</p> <p>14 I -- I did not know because I was not</p> <p>15 involved in, as I mentioned, you know -- in shaping,</p> <p>16 editing, drafting, commenting on. That's not exactly my</p> <p>17 role anyway, the motion filed by plaintiffs.</p> <p>18 I thought there, you know -- there might be</p> <p>19 a discussion of employment per se, which is actually what</p> <p>20 I can study with my comparison to the ACS data, even</p> <p>21 though that is not -- you know, the ACS -- I don't see in</p> <p>22 the ACS data who got hired. Just, you know, as a flow. I</p> <p>23 see who's working there now.</p> <p>24 So I -- you know, did I -- I might -- I -- I</p> <p>25 didn't really think about it because I don't really worry</p>	<p style="text-align: right;">Page 44</p> <p>1 record at 11:16. You may proceed.</p> <p>2 Q. (BY MR. KING) Dr. Neumark, please turn to page 5</p> <p>3 of your report and look at paragraph 12.</p> <p>4 A. Okay.</p> <p>5 Q. Thanks. And that's where you define what you</p> <p>6 mean by the relevant labor market. Is that correct?</p> <p>7 A. Yes. I give more detail later, yes.</p> <p>8 Q. Okay. If I were interested in defining the labor</p> <p>9 market from which hiring typically occurs, this would not</p> <p>10 necessarily lead to the definition, would it?</p> <p>11 MR. LOW: Objection, vague.</p> <p>12 A. I think you're referring -- I think you're</p> <p>13 referring directly back to your -- your comment about the</p> <p>14 applicant pool. So is that -- is that what you're asking</p> <p>15 me?</p> <p>16 Q. (BY MR. KING) Yes, that's not a bad way to look</p> <p>17 at it.</p> <p>18 Is this your approximation to what you think</p> <p>19 the applicant pool would look like under nondiscriminatory</p> <p>20 circumstances?</p> <p>21 A. Well, let me say -- let me say it this way, and</p> <p>22 then if I'm not answering your question, I'm sure you will</p> <p>23 let me know. We -- we sometimes have in a hiring case</p> <p>24 applicant data to a company and obviously, you know, who</p> <p>25 got hired and who didn't or maybe who got job offers and</p>



<p style="text-align: right;">Page 45</p> <p>1 who didn't because they may or may not take the job offer.</p> <p>2 If -- if I'm working on such a case before I</p> <p>3 accept kind of the applicant data -- the applicant data, I</p> <p>4 do a lot of checks to make sure they're complete, for</p> <p>5 example, are there hires who show up who weren't in the</p> <p>6 applicant data, one -- one indication that I don't have</p> <p>7 all the applicant data, and companies don't always keep</p> <p>8 great applicant data because those aren't personnel</p> <p>9 records in the same way that they have to keep records on</p> <p>10 employees.</p> <p>11 Sometimes those data don't exist at all.</p> <p>12 Sometimes they look very incomplete so they can't be used,</p> <p>13 and sometimes even you have them and they look complete,</p> <p>14 you might be concerned about how the applicant pool is</p> <p>15 shaped, where I recruit, who I choose to recruit, do I go</p> <p>16 on LinkedIn and look for people with certain ethnicity or</p> <p>17 whatever.</p> <p>18 In that case or as -- as just to another --</p> <p>19 you know, another kind of analysis, you do what's called</p> <p>20 an external benchmarks analysis, which is what this is,</p> <p>21 which is trying to say essentially, What is the</p> <p>22 availability of workers for these types of jobs in the</p> <p>23 local workforce, and that's -- that's what that is.</p> <p>24 Q. Okay. And why do you restrict this to the local</p> <p>25 labor -- workforce?</p>	<p style="text-align: right;">Page 47</p> <p>1 we're -- if we're studying the US as a whole, which is</p> <p>2 what I'm doing in this analysis, in my -- in my report</p> <p>3 then it's the -- it's what is the ethnic -- what is the</p> <p>4 share South Asian, you know, in the industry and</p> <p>5 occupations in the US labor market.</p> <p>6 If this were an analysis of, you know,</p> <p>7 hiring at one location or there were only -- there was one</p> <p>8 location of this company, then the local labor market</p> <p>9 might be more -- more narrowly geographically defined.</p> <p>10 Q. Please turn to page 7 and paragraph 17.</p> <p>11 A. Okay.</p> <p>12 Q. Have you gotten there? Did you review it?</p> <p>13 A. Yes.</p> <p>14 Q. You acknowledge that you were given a dataset of</p> <p>15 Wipro applicants, correct?</p> <p>16 A. I believe it was a few datasets, if I'm not</p> <p>17 mistaken. Yes, data -- data -- I was given data on</p> <p>18 applicants.</p> <p>19 Q. And you were given the names of those applicants?</p> <p>20 A. Yes.</p> <p>21 Q. All right. And you know the jobs for which they</p> <p>22 applied.</p> <p>23 A. I -- I -- I don't remember everything that was in</p> <p>24 the data. That's not written here unless by that you mean</p> <p>25 job location. What -- what I list here is resume ID,</p>
<p style="text-align: right;">Page 46</p> <p>1 A. By which you mean the US workforce or -- because</p> <p>2 I'm hiring -- I'm studying hiring -- well, again, it's not</p> <p>3 hiring directly. I'm studying behavior, employment in the</p> <p>4 US, and asking how it differs in -- in -- in the industry</p> <p>5 and occupations in which Wipro operates versus Wipro</p> <p>6 itself.</p> <p>7 Q. And -- but you know many hires are made of people</p> <p>8 who are not residing in the US, correct?</p> <p>9 A. I know they bring in Visa workers, and that --</p> <p>10 that was the issue who obviously aren't -- well, typically</p> <p>11 not residing in the US although (audio distortion), but</p> <p>12 putting that aside, yes, I know there is a flow of new --</p> <p>13 there is a flow of new Visa workers into the country to</p> <p>14 take some of these jobs.</p> <p>15 But as we talked about before, I think, you</p> <p>16 know, there's a legal issue I can't rule on or I probably</p> <p>17 shouldn't even opine on, but in my -- in my -- you ask me</p> <p>18 as a labor economist, you know, what should I be comparing</p> <p>19 a company's hiring to if they're bringing people into a</p> <p>20 country or some other definition of a labor market, I</p> <p>21 would say that labor market. That's at least a</p> <p>22 reasonable -- a reasonable analysis to do.</p> <p>23 Q. I don't know what you meant by "that labor</p> <p>24 market." What was "that labor market" in your answer?</p> <p>25 A. Well, if -- if we were -- so if we're -- if</p>	<p style="text-align: right;">Page 48</p> <p>1 applicant name and job location, but that -- but it starts</p> <p>2 with a "such as." That's not a comprehensive list, and I</p> <p>3 don't remember the whole list.</p> <p>4 Q. And what did you mean by "job location"? Is that</p> <p>5 the geographic location of a job?</p> <p>6 A. I'm not sure. I -- I -- judging by the name, I</p> <p>7 suspect so, but I didn't review that specific information.</p> <p>8 Q. Okay. And why do you think the data were</p> <p>9 incomplete?</p> <p>10 MR. LOW: Calls for speculation.</p> <p>11 A. Well, I -- I don't say definitively they weren't</p> <p>12 complete. I say I have no information on the completeness</p> <p>13 of this applicant data. That was something I looked at</p> <p>14 very early in the research, and I honestly don't recall</p> <p>15 the detail of what I did except -- except for recalling</p> <p>16 that I -- I was by no means convinced they were complete.</p> <p>17 But I -- but more than that, I don't</p> <p>18 remember, and I didn't review that -- this, and I indeed</p> <p>19 haven't looked at for -- you know, since early on when I</p> <p>20 got the data, which I think was something like a year ago,</p> <p>21 although that's a guess.</p> <p>22 Q. (BY MR. KING) Okay. So presently you're not sure</p> <p>23 in what respect the data were incomplete, if any?</p> <p>24 A. Correct.</p> <p>25 Q. You mentioned the data lacked a race of ethnicity</p>

<p style="text-align: right;">Page 49</p> <p>1 of applicants. Do you see that?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Is there any reason why you couldn't have gone</p> <p>4 through the same name matching procedure you describe in</p> <p>5 your report with respect to the names of applicants?</p> <p>6 <b>A. I could have. I would -- I would be -- remember</b></p> <p>7 <b>though that when I study Wipro employees, I have -- and</b></p> <p>8 <b>I -- I document this in the table, I get a lot of</b></p> <p>9 <b>information on nationality. I -- I get a lot of</b></p> <p>10 <b>identification of South Asians from the nationality data,</b></p> <p>11 <b>and then I supplement it with information on the names.</b></p> <p>12 <b>Doing a full analysis of the dataset where</b></p> <p>13 <b>only use the names would be -- would be, you know -- I</b></p> <p>14 <b>could do it. It would be, you know, not quite as reliable</b></p> <p>15 <b>let's say.</b></p> <p>16 Q. But you elected not to?</p> <p>17 <b>A. Well, not just for that reason but, yes.</b></p> <p>18 Q. Right. You preferred instead to use the ACS</p> <p>19 database to approximate the group from which hires might</p> <p>20 occur?</p> <p>21 <b>A. Well, I -- I want to be clear here. You know, if</b></p> <p>22 <b>you go back to paragraph 7, which has a bunch of parts to</b></p> <p>23 <b>it, I reach a conclusion about employment, paragraph (a),</b></p> <p>24 <b>about promotions, paragraph (b), about involuntary</b></p> <p>25 <b>terminations, paragraph (c).</b></p>	<p style="text-align: right;">Page 51</p> <p>1 <b>So Wipro has fewer South Asians because they</b></p> <p>2 <b>terminate them at a faster rate, consistent with the</b></p> <p>3 <b>evidence I find. That would -- that wouldn't be reflected</b></p> <p>4 <b>in applicant or hire date, at least not directly unless</b></p> <p>5 <b>people stop applying because they learn this.</b></p> <p>6 Q. What fraction of those counted in the ACS survey</p> <p>7 were searching for jobs during the class period in this</p> <p>8 case?</p> <p>9 <b>A. I -- I -- I think I say this -- I think I -- I</b></p> <p>10 <b>can dig it up if you wanted to, but nothing in the ACS is</b></p> <p>11 <b>hiring. It's all about where you're employed now, which</b></p> <p>12 <b>is why -- and as I just said, I -- I don't draw a</b></p> <p>13 <b>conclusion -- a strong conclusion -- I don't -- I'm not</b></p> <p>14 <b>sure I say anything in here -- I may somewhere, but</b></p> <p>15 <b>certainly in paragraph 7 about hiring per se based on that</b></p> <p>16 <b>because it's not literally a hiring flow.</b></p> <p>17 <b>It's -- it's indicative of hiring, you</b></p> <p>18 <b>know -- there's -- there's no evidence one way or another,</b></p> <p>19 <b>you know, the jobs people are in are different from the</b></p> <p>20 <b>jobs they're currently looking for, but it's not a direct</b></p> <p>21 <b>measure of hiring.</b></p> <p>22 <b>It's not a -- the ACS is not -- there are</b></p> <p>23 <b>datasets. They would provide a much smaller sample</b></p> <p>24 <b>obviously where I could, you know, follow people over</b></p> <p>25 <b>time, and I can see people even saying they're searching</b></p>
<p style="text-align: right;">Page 50</p> <p>1 <b>You asked before about when I -- you know,</b></p> <p>2 <b>when I did or didn't learn that hiring wasn't included. I</b></p> <p>3 <b>mean -- and I -- I clearly was -- a long -- a long time</b></p> <p>4 <b>ago because this, you know -- this report didn't change</b></p> <p>5 <b>based on what was included in the motion filed by the</b></p> <p>6 <b>defendants -- filed by the plaintiffs.</b></p> <p>7 <b>I was never pushing a hiring story very hard</b></p> <p>8 <b>anyways. In fact, my main -- it wasn't the question</b></p> <p>9 <b>asked, but it certainly wasn't even in my summary of</b></p> <p>10 <b>findings.</b></p> <p>11 <b>So -- so in that sense I -- I preferred to</b></p> <p>12 <b>do it -- you know, to study hiring. I mean, I -- I</b></p> <p>13 <b>suppose but I'm not really focusing on hiring, the only --</b></p> <p>14 <b>the only thing I use it for is to say something about</b></p> <p>15 <b>employment. Employment is a product of not just hiring,</b></p> <p>16 <b>right? It's a product of hiring, retention and</b></p> <p>17 <b>terminations.</b></p> <p>18 Q. But, in fact, you did use the ACS data rather</p> <p>19 than the applicant data in approximating the relevant</p> <p>20 labor market?</p> <p>21 <b>A. Yes, to compare -- to compare employment at Wipro</b></p> <p>22 <b>to employment in the relevant labor market, I did. But</b></p> <p>23 <b>it's not because the applicant flow data would be the</b></p> <p>24 <b>right way to do that because that's only about, you know,</b></p> <p>25 <b>Lisa Myers -- only relevant to Lisa Myers, right?</b></p>	<p style="text-align: right;">Page 52</p> <p>1 <b>for a job and taking a certain jobs, but that's not the</b></p> <p>2 <b>ACS.</b></p> <p>3 Q. As a literal fact, you don't know if there's</p> <p>4 anyone in the ACS survey who was interested in working at</p> <p>5 Wipro?</p> <p>6 <b>A. I -- i have no way to measure that directly.</b></p> <p>7 Q. Okay. Turn to page 13, paragraph 31.</p> <p>8 <b>A. Okay.</b></p> <p>9 Q. Okay. Please look at the second sentence in</p> <p>10 paragraph 31: "My analysis of Wipro and external</p> <p>11 benchmark data shows evidence strongly consistent with</p> <p>12 Wipro discriminating in favor of South Asians and hiring</p> <p>13 employees placed in the US positions."</p> <p>14 Do you see that?</p> <p>15 <b>A. Yes, and I -- so I did say I might say it</b></p> <p>16 <b>somewhere, and that's -- that's where I say it. So okay.</b></p> <p>17 <b>Fair enough.</b></p> <p>18 Q. Okay. But, in fact, you told me that the</p> <p>19 external benchmark data doesn't tell you anything about</p> <p>20 hiring. Isn't that true?</p> <p>21 <b>A. I -- I -- I -- you'd have to read back that</b></p> <p>22 <b>version. I don't think that's what I said. I said it --</b></p> <p>23 <b>it doesn't provide a direct measure of hiring, right? It</b></p> <p>24 <b>doesn't -- it doesn't literally measure a flow into a job.</b></p> <p>25 <b>It measures people working in jobs.</b></p>



<p style="text-align: right;">Page 53</p> <p>1 Q. Yes.</p> <p>2 A. Those things have to be related. I -- I -- one</p> <p>3 doesn't know how strongly related they are. I think</p> <p>4 that's a more accurate summary of what I said.</p> <p>5 Q. But as you yourself point out that the</p> <p>6 composition of Wipro or any company at any one time</p> <p>7 depends on more than hiring practices, correct?</p> <p>8 A. Yes. Yes. But I -- I will say that external</p> <p>9 benchmarks are used to study hiring discrimination. Is it</p> <p>10 as good as clean, complete, you know, untainted applicant</p> <p>11 data? No, but we often don't have it.</p> <p>12 Q. Right. Well, I doesn't dispute that it's used.</p> <p>13 The question is, is it properly used, and what's your</p> <p>14 opinion about that? And then we'll go further.</p> <p>15 A. My opinion -- my opinion is, it -- it -- you</p> <p>16 know, I -- I use the word "strongly consistent"</p> <p>17 deliberately, and the "strongly" here refers to the</p> <p>18 statistical -- let me be clear.</p> <p>19 The consistent is the direction of the</p> <p>20 evidence, and maybe I should have said this. The</p> <p>21 "strongly" is the very strong statistical evidence. I'm</p> <p>22 not using "strongly" in the sense of what we discussed</p> <p>23 earlier, which is ruling out other explanations, and one</p> <p>24 can view this discussion we're having now as ruling out</p> <p>25 other explanations.</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. Right.</p> <p>2 A. Those are the only -- those are the three ways</p> <p>3 the workforce changes.</p> <p>4 Q. That's right. So you can't compare the profile</p> <p>5 or the snapshot of Wipro in a moment in time to an</p> <p>6 external benchmark and conclude which of those three</p> <p>7 elements of change are responsible, correct?</p> <p>8 A. Just from that, no. The -- the two I observe</p> <p>9 well in the data are promotions and involuntary</p> <p>10 terminations, both of which -- well, involuntary</p> <p>11 terminations boosts the share of South Asian. Promotions</p> <p>12 may or may not depending on who leaves and does not get</p> <p>13 promotion.</p> <p>14 Q. I'd like to pose a hypothetical to you. Suppose</p> <p>15 it is the case that Americans are the discriminators and</p> <p>16 South Asians aren't. All Americans have a taste for</p> <p>17 discrimination against South Asians. That's obvious, I</p> <p>18 don't know --</p> <p>19 (Simultaneous speakers.)</p> <p>20 A. Are you mad at the people making the hiring</p> <p>21 decisions, which Americans and South Asians don't?</p> <p>22 Q. All Americans.</p> <p>23 A. Okay.</p> <p>24 Q. American-owned companies have a taste for</p> <p>25 discrimination against outside South Asians. American</p>
<p style="text-align: right;">Page 54</p> <p>1 So if you want to say, Is it hypothetically</p> <p>2 true -- is it hypothetically possible, right, that there's</p> <p>3 no discrimination hiring and the employment -- the -- the</p> <p>4 hugely different share of South Asians is shaped solely by</p> <p>5 promotions and terminations -- sorry, by terminations and</p> <p>6 maybe -- maybe, you know, voluntary quits because you</p> <p>7 don't get promoted or for what -- other reasons.</p> <p>8 You don't know if the numbers could work out</p> <p>9 that way, but it's hypothetically true. It's</p> <p>10 hypothetically possible. But, you know, employment and</p> <p>11 hiring obviously are closely related because on average,</p> <p>12 people don't stay in jobs for that long.</p> <p>13 So -- so there's -- there's a presumption</p> <p>14 that what you see in one is reflected in the other. It's</p> <p>15 not a direct measure of hiring. That -- that is clearly</p> <p>16 true also.</p> <p>17 Q. Just to be clear, the profile you might say of</p> <p>18 Wipro in terms of employment at any given moment in time,</p> <p>19 a snapshot, depends on what the profile was at some</p> <p>20 initial period, perhaps when Wipro first formed in the</p> <p>21 United States, its hiring experience and its termination</p> <p>22 experience?</p> <p>23 A. Including -- including -- if by termination you</p> <p>24 mean both voluntarily and involuntary exit -- exit is the</p> <p>25 more neutral term, yes.</p>	<p style="text-align: right;">Page 56</p> <p>1 workers have a taste for discrimination against</p> <p>2 South Asians, not vice versa.</p> <p>3 In that world, how would the data look</p> <p>4 different?</p> <p>5 A. Let me just ask you which -- which -- to be a</p> <p>6 little more specific, which data? What -- give me some</p> <p>7 measure of how you're asking.</p> <p>8 Q. That's a great point. Fair enough. The profile</p> <p>9 data, the snapshots?</p> <p>10 A. Wipro's snapshot?</p> <p>11 Q. Yes.</p> <p>12 A. Well, I don't know who's making -- I don't</p> <p>13 know -- I'm not sure if Americans or South Asians are</p> <p>14 making the hiring decision.</p> <p>15 Q. Okay. Let's suppose American companies</p> <p>16 discriminate against South Asia in this industry.</p> <p>17 A. Uh-huh.</p> <p>18 Q. Okay. You would expect to see fewer South Asians</p> <p>19 employed at American companies by these same people,</p> <p>20 correct?</p> <p>21 A. If they -- if they -- well, your hypothetical is</p> <p>22 they have a taste to discriminate --</p> <p>23 Q. Yes.</p> <p>24 A. And we have laws that hopefully, you know --</p> <p>25 Q. Well --</p>

<p style="text-align: right;">Page 57</p> <p>1 A. -- make that -- make that not -- not be effective  2 to a greater extent, but there might be some of that.  3 Q. In which case because the South Asian employees  4 must work somewhere, you would expect them to be  5 overrepresented in companies owned by South Asians,  6 correct, who don't have that taste for discrimination?  7 A. I mean, maybe, maybe not. I mean, Wipro has --  8 Wipro has American workers too, who told you just told me  9 also like working with South Asians, and -- and the  10 South Asian share is clearly being driven you by Visa  11 workers as well.  12 So it's not just the Americans and  13 South Asians who can't find jobs. So, I mean, you know,  14 could that happen to some extent? Yeah. Do I think it's  15 the explanation of these huge discrepancies? Highly  16 unlikely, but --  17 Q. You never --  18 (Simultaneous speakers.)  19 A. You are posing a hypothetical, so yes, it could  20 happen to some extent. I don't -- it could happen to some  21 extent. I'd be -- I'd be -- I would very much doubt that  22 it could explain these numbers, you know -- these  23 employment numbers versus the benchmarks, so I can't  24 obviously say that, you know, scientifically.  25 And it wouldn't explain why the South Asians</p>	<p style="text-align: right;">Page 59</p> <p>1 to be clear. It's hypothetically true, I suspect. I'm --  2 I'm highly suspicious of actually the explanation.  3 Q. But you've never looked at the employment profile  4 of an American-based or an American-owned company other  5 than a South Asian --  6 A. I have not -- I have not yet been engaged by a --  7 a company -- a company in this industry being sued for  8 discrimination against South Asia, which might -- which  9 actually might be viewed as evidence that's not happening,  10 or maybe no one called me up. I can't tell -- I can't  11 distinguish between those two.  12 Q. What is the basis for your assumption that in the  13 absence of discrimination, Wipro's workforce would  14 resemble the demographic data within the ACS?  15 A. Well, I mean, that's -- that's the -- that's  16 the -- I mean, in -- in both research and as far as I know  17 in the legal setting, the -- you know, what we call the  18 no hypothesis if one wasn't discriminating and, you  19 know -- and there weren't some obvious other factor that  20 mattered, that hiring would be neutral, just like we would  21 expect it -- we're discriminating based on pay between men  22 and women that they're -- you know, the pay of similar men  23 and women would be.  24 Do I -- you know, would it be exactly the  25 same? Not necessarily, right? I mean, you -- you raised</p>
<p style="text-align: right;">Page 58</p> <p>1 get favored in promotion decisions and involuntary  2 termination decisions at Wipro.  3 Q. If Americans are underrepresented or  4 non-South Asians are underrepresented in South Asian  5 companies, as you opined on a number of occasions, they  6 must by definition be overrepresented in non-South Asian  7 companies, correct?  8 A. Yes.  9 Q. They have to work somewhere or there wouldn't be  10 in the ACS survey?  11 A. There wouldn't be in the ACS in this industry,  12 yeah.  13 Q. So you could create a profile of American-owned  14 companies that would be top heavy with Americans, just as  15 you find Wipro top heavy with South Asians?  16 A. Okay. I just want to be clear here. We're --  17 we're -- we're in hypothetical world. I've seen no  18 evidence of some -- of those companies. I haven't -- you  19 know, in my research, in my -- in my -- in my expert  20 witness work, purely anecdotally -- and this is not data,  21 so I'll be clear. I live in the Bay Area. We are filled  22 with American-owned tech companies, and there is a lot of  23 South Asians at those companies.  24 Now again, I can't -- I can't quantify that.  25 So I find what you're suggesting -- you know, I just want</p>	<p style="text-align: right;">Page 60</p> <p>1 the issue of location, you know. Yeah, there are slightly  2 different states with slightly different shares of  3 South Asians, maybe it wouldn't be exactly equal. But,  4 you know, but that's -- it's -- it's the most obvious  5 starting point for the no hypothesis of what we would see  6 in the absence of discrimination.  7 Q. You're --  8 A. And -- and -- and those other factors I'm talking  9 about, it's not clear which way they push the analysis.  10 It's not clear to make the evidence weaker or stronger.  11 It just changes slightly.  12 Q. But your judgments regarding discrimination and  13 with respect to employment are based on the fact that the  14 demographics of the Wipro workforce does not resemble the  15 demographics of the ACS data?  16 A. It -- it does not resemble the demographics of  17 the ACS data in the same, you know, rough -- well, pretty  18 close to the same industry and pretty close to the same  19 occupation.  20 Q. Right.  21 A. Any -- I think any -- I -- I would -- I think any  22 reasonable labor -- I shouldn't say any, you know, who  23 knows what reasonable means. But I think -- I think most  24 reasonable labor economists would say that is clearly the  25 most natural benchmark to compare Wipro's composition to.</p>

<p>Page 61</p> <p>1 Q. Okay. Suppose one asks an additional question</p> <p>2 which is, Why don't the two resemble each other. What</p> <p>3 information do you have that makes it more likely that</p> <p>4 it's discrimination rather than some other reason?</p> <p>5 A. I don't think I go out on any -- any limbs in</p> <p>6 this report insisting -- I don't think I say anywhere it</p> <p>7 is discrimination, and it's not anything else. I say it's</p> <p>8 strongly consistent with discrimination, right?</p> <p>9 There, you know -- I think there's obviously</p> <p>10 other material that the -- and I don't know -- I don't</p> <p>11 know if they have other experts or whatever. But the</p> <p>12 attorneys may -- may not be talking about or referring to</p> <p>13 other -- other evidence.</p> <p>14 But I, you know -- I -- my -- my role here</p> <p>15 is not -- what, you know -- was not defined as and</p> <p>16 therefore is not to assess, you know, the qualitative</p> <p>17 evidence and the declarations of people who say they, you</p> <p>18 know, experienced discrimination and all that other kind</p> <p>19 of stuff. I have a -- I'm just -- I'm here just to do a</p> <p>20 statistical analysis of the data.</p> <p>21 So there are other parts of the picture, but</p> <p>22 I'm not -- you know, I'm not a -- I haven't reviewed</p> <p>23 those. I haven't seen most -- really the only other stuff</p> <p>24 I've seen along those lines -- everything -- everything I</p> <p>25 looked at and considered is in my report.</p>	<p>Page 63</p> <p>1 they are based on data, I will presumably be asked to --</p> <p>2 to weigh in on what I think of those analyses.</p> <p>3 Q. Please take a look at paragraph 37. It's on</p> <p>4 page 16.</p> <p>5 A. Uh-huh, okay.</p> <p>6 Q. I'm focusing on this paragraph unlike others</p> <p>7 where you say it's "consistent with." Here you're saying</p> <p>8 the evidence "strongly suggests."</p> <p>9 Is that a different degree of confidence?</p> <p>10 A. No, I don't think so. I think the same -- I</p> <p>11 think the same as what I said -- I mean, there's a</p> <p>12 difference here. This -- this is not a comparison to</p> <p>13 benchmark data, right? This is a comparison of the --</p> <p>14 because there's no -- there's no -- there's no -- there's</p> <p>15 no Career Bands in the ACS data obviously.</p> <p>16 So this is just a comparison of where people</p> <p>17 are coming at Wipro, South Asians versus non-South Asians.</p> <p>18 So I -- I -- probably -- it probably would have been just</p> <p>19 fine to use the same consistent -- I think -- I think the</p> <p>20 reason I use "suggested" is because -- I'll check before I</p> <p>21 say this.</p> <p>22 This is Table 2, I think. I did not --</p> <p>23 there's not actually a statistical test in this table.</p> <p>24 This is just comparing the percentages. I believe that is</p> <p>25 why -- because I'm pretty careful on the language.</p>
<p>Page 62</p> <p>1 There were obviously some things referenced</p> <p>2 in the motion that point in that direction, but I'm not</p> <p>3 testifying about those because I didn't, you know, talk to</p> <p>4 those people or know them or anything -- anything about</p> <p>5 that.</p> <p>6 Q. So when you say that the data are consistent with</p> <p>7 discrimination, you're not ruling out the possibility that</p> <p>8 it's also -- data are also consistent with</p> <p>9 nondiscriminatory explanations?</p> <p>10 A. I cannot decisively rule it out for the reasons</p> <p>11 we discussed I think right at the outset, which is I</p> <p>12 haven't estimated, you know, I mean, I'm studying -- all</p> <p>13 I'm studying here is outcomes like South Asians status</p> <p>14 group, right, with some disaggregation.</p> <p>15 So there are some cases like the promotions</p> <p>16 by band where you could think about that as controls. But</p> <p>17 I haven't done a detailed analysis of -- that incorporates</p> <p>18 other potentially legitimate explanations for the</p> <p>19 differences because -- you know, it wasn't my</p> <p>20 understanding -- it wasn't really the goal at this stage,</p> <p>21 and I didn't have the data anyways.</p> <p>22 As I said, my understanding of the way this</p> <p>23 works is, you know, a disparity is established. The</p> <p>24 company has, you know -- has the potential to -- you know,</p> <p>25 to offer not discriminatory explanations. To the extent</p>	<p>Page 64</p> <p>1 I believe that is why I said that instead of</p> <p>2 "strongly consistent," which I -- I hope I've reserved --</p> <p>3 you might trip me up on an example, but I hope I've</p> <p>4 reserved for some reason the statistical test --</p> <p>5 Q. So the -- the conclusion you reference in</p> <p>6 paragraph 37 is not based on formal statistical test?</p> <p>7 A. Correct.</p> <p>8 Q. And it also isn't based on the analysis that</p> <p>9 contains nondiscriminatory reasons with respect to the</p> <p>10 selections that are being made?</p> <p>11 A. It's a description of outcomes, the outcome here</p> <p>12 being the band into which you are hired. There are</p> <p>13 statistical tests to do -- I just -- frankly I don't -- I</p> <p>14 didn't -- I didn't for that particular case -- that</p> <p>15 particular example.</p> <p>16 But one can obviously do statistical tests</p> <p>17 that compare distributions across two dimensions, and</p> <p>18 I'm -- I'm pretty sure what we would find -- these are</p> <p>19 huge differences. There's -- there's no way these</p> <p>20 wouldn't be strong.</p> <p>21 Q. Okay. You also didn't do a statistical test</p> <p>22 regarding the uniformity of the differences in each job</p> <p>23 classification.</p> <p>24 A. By which you mean the difference between the</p> <p>25 percentages in each row versus the last row?</p>

<p>Page 65</p> <p>1 Q. Yes.</p> <p>2 <b>A. Sure. But that's why I said if I compare -- or</b></p> <p>3 <b>let's say group -- so the total row is 11,600 people,</b></p> <p>4 <b>71 percent -- I'm going to round here, 71 percent</b></p> <p>5 <b>non-South Asian, 29 percent South Asian. Take, oh, I</b></p> <p>6 <b>don't know, group C1, 648 people. Those percentages</b></p> <p>7 <b>differ by 29 or 30 percentage points.</b></p> <p>8 <b>If you want to take a side bet on that being</b></p> <p>9 <b>statistically significant consistent with the last row,</b></p> <p>10 <b>I'll be happy to take that bet, or however big you want it</b></p> <p>11 <b>to be.</b></p> <p>12 <b>And that would be true for many of these</b></p> <p>13 <b>rows. Maybe not group E with 15 people because that's not</b></p> <p>14 <b>many people, but these ones with hundreds of people and</b></p> <p>15 <b>percentage point differences of 10 or 20 or 30 -- even</b></p> <p>16 <b>close to 30 for sure.</b></p> <p>17 MR. KING: Can we go off the record for a</p> <p>18 second?</p> <p>19 VIDEOGRAPHER: Going off the record at</p> <p>20 11:51.</p> <p>21 (Recess taken from 11:51 a.m. to 12:28 p.m.)</p> <p>22 VIDEOGRAPHER: We are back on the record at</p> <p>23 12:27. You may proceed.</p> <p>24 Q. (BY MR. KING) Dr. Neumark, I'd like to have one</p> <p>25 more question about the ACS data, and my question is</p>	<p>Page 67</p> <p>1 put in all four or one at a time?</p> <p>2 MR. KING: I think all four would be fine.</p> <p>3 MS. RODRIGUEZ: I'll be sending it over</p> <p>4 through the chat function.</p> <p>5 THE REPORTER: Are you marking all of those</p> <p>6 as one exhibit?</p> <p>7 MR. KING: You know, maybe we ought to make</p> <p>8 each one a separate exhibit. It would be a bit easier</p> <p>9 perhaps.</p> <p>10 <b>THE WITNESS: So did we just get one of</b></p> <p>11 <b>them?</b></p> <p>12 MR. RODRIGUEZ: Yes, I'm sending them one by</p> <p>13 one. So there should be in four total.</p> <p>14 (Reporter clarification.)</p> <p>15 MR. RODRIGUEZ: When I send them across, I</p> <p>16 will label them correctly for you for after the</p> <p>17 deposition.</p> <p>18 THE REPORTER: Thank you.</p> <p>19 MR. KING: Ms. Rodriguez, would you tell us</p> <p>20 which ones you are identifying as 2, 3, 4 and 5?</p> <p>21 MR. RODRIGUEZ: So they will be identified</p> <p>22 in the order I send them across, so the one that has 9</p> <p>23 will be 2. The one that's 10, 2015, will be 3. 11, 2017</p> <p>24 will be 4. And 12, 2018 will be 5.</p> <p>25 (Exhibits 2-5 marked.)</p>
<p>Page 66</p> <p>1 whether you stratified any of your analyses by the</p> <p>2 education level of any of the individuals reported in that</p> <p>3 sample?</p> <p>4 <b>A. I did not. I -- I -- I believe -- well, there is</b></p> <p>5 <b>education data in the ACS. I don't think I have education</b></p> <p>6 <b>data in the Wipro data. Obviously conditioning on</b></p> <p>7 <b>industry and occupation is going to, you know, capture a</b></p> <p>8 <b>lot of education variation, but I didn't do it directly</b></p> <p>9 <b>aside.</b></p> <p>10 Q. Okay. Thank you.</p> <p>11 Dr. Neumark, I believe you were provided and</p> <p>12 you reference in your report that you received the</p> <p>13 promotion policies that were in effect during the class</p> <p>14 period?</p> <p>15 <b>A. Right.</b></p> <p>16 MR. KING: Ms. Rodriguez --</p> <p>17 <b>A. I don't know if I have this complete. I</b></p> <p>18 <b>reference two -- two documents. I don't recall if they're</b></p> <p>19 <b>different or not, but, yes.</b></p> <p>20 Q. (BY MR. KING) Well, we're going to put them in</p> <p>21 evidence, and then you can discuss those in your</p> <p>22 testimony.</p> <p>23 MR. KING: So Ms. Rodriguez if you would</p> <p>24 please put those into evidence, please.</p> <p>25 MR. RODRIGUEZ: Allan, would you like me to</p>	<p>Page 68</p> <p>1 Q. (BY MR. KING) Dr. Neumark, please look at</p> <p>2 Exhibit 2.</p> <p>3 <b>A. Which is number 9, right? Okay. I have it.</b></p> <p>4 <b>Make it a little smaller because it came up huge. Okay.</b></p> <p>5 Q. I'm not sure where the number -- I see. Okay.</p> <p>6 Please turn to page 2.</p> <p>7 <b>A. Okay.</b></p> <p>8 Q. Under paragraph 2, what's the effective date on</p> <p>9 Exhibit 2 that you have?</p> <p>10 <b>A. March 1, 2014.</b></p> <p>11 Q. Okay. Have you reviewed this document before?</p> <p>12 <b>A. Yes. Let me make sure -- yeah. This looks to be</b></p> <p>13 <b>the second one I call promotion policy in my materials.</b></p> <p>14 Q. Okay. Do you see that in paragraph 3 there's a</p> <p>15 description of the timeline?</p> <p>16 <b>A. Yeah.</b></p> <p>17 Q. Okay. If it's the case that you have to be</p> <p>18 present to be promoted, do you take account of who is</p> <p>19 present during -- or at the appropriate dates in order to</p> <p>20 receive a promotion in your analysis?</p> <p>21 <b>A. Sorry. So I -- so I -- the -- the time -- if</b></p> <p>22 <b>you're asking about -- just to make sure I understand the</b></p> <p>23 <b>question. The two lines below timeline refer to when</b></p> <p>24 <b>they're effective?</b></p> <p>25 Q. Yes.</p>



<p style="text-align: right;">Page 69</p> <p>1 A. So you -- is what you're asking, if I was</p> <p>2 studying let's say B3 to refer to the first line and</p> <p>3 someone was hired in -- on June 2nd, they could not have</p> <p>4 been promoted that year. Is that what -- you're asking</p> <p>5 about that.</p> <p>6 Q. Yeah, yeah.</p> <p>7 A. I'm just trying to understand the question.</p> <p>8 No, they would -- they would be considered</p> <p>9 not -- there's -- there's -- that would be -- so in the</p> <p>10 year -- in the first year of employment, if they were</p> <p>11 hired June 1st B3 or below or October 11th, C1 and above,</p> <p>12 that would not be counted -- that would be -- that would</p> <p>13 be an observation in the data without a promotion by -- by</p> <p>14 construction.</p> <p>15 Q. Right. But would you delete that person from the</p> <p>16 pool of eligibles in your analysis?</p> <p>17 A. I haven't.</p> <p>18 Q. And the same would be true with respect to the</p> <p>19 C1 promotions?</p> <p>20 A. Yeah, probably because it's later, less likely --</p> <p>21 much less likely to be relevant, correct.</p> <p>22 Q. Right. But if I understand, what you did do was</p> <p>23 ask, were you present in the data between two dates and</p> <p>24 then were you promoted?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 71</p> <p>1 A. Yes.</p> <p>2 Q. Did you consider the fact that longer tenure may</p> <p>3 improve the likelihood of a promotion?</p> <p>4 A. Well, that -- that goes to our previous</p> <p>5 discussion, that I have not -- I have not</p> <p>6 explored model -- sorry. I have not explored models of</p> <p>7 potential explanatory factors, you know, I mean, the main</p> <p>8 reason being, I would -- I -- I don't know of company</p> <p>9 policy -- I haven't read anything, but my guess would be</p> <p>10 how you're performing the job is the most important thing</p> <p>11 for promotions. It usually is.</p> <p>12 It's not clear which way tenure goes. Some</p> <p>13 of the people have been in the job the long -- for a long</p> <p>14 time -- the lowest performers, that's why they're still</p> <p>15 there.</p> <p>16 I would be -- I would be very, you know,</p> <p>17 given -- and with respect to the tenure question, given</p> <p>18 that I have evidence of higher involuntary termination</p> <p>19 rates for non-South Asians, that sure makes using tenure</p> <p>20 as a control variable problematic as it's harder -- it's</p> <p>21 clearly harder for non-South Asian to accumulate tenure</p> <p>22 that might be required, and in fact, according to some of</p> <p>23 the other information in this document, is required, as I</p> <p>24 understand it, as a criteria -- as a criterion for</p> <p>25 promotions.</p>
<p style="text-align: right;">Page 70</p> <p>1 Q. How long you were in the data is not accounted</p> <p>2 for in your work?</p> <p>3 A. Let me think about that for a second. That's</p> <p>4 correct. Well, let me -- let me -- let me -- let me</p> <p>5 clarify that a little.</p> <p>6 So, yeah, how long you were present is not</p> <p>7 reflected in my work, but in my promotion analysis --</p> <p>8 remember, there's -- there's -- there's a pool column,</p> <p>9 right, in column -- let's say, for example, column --</p> <p>10 almost there, sorry -- the last column in 3, and then all</p> <p>11 of the stuff by band is for the pool analysis.</p> <p>12 And there I'm counting whether you're ever</p> <p>13 promoted, so, you know, I -- it -- if you got hired let's</p> <p>14 say for B3 and below, you know -- if you got hired in July</p> <p>15 and canned in August or left in August, doesn't matter why</p> <p>16 you left, then you can say maybe that should not have been</p> <p>17 in sort of an at risk of being promoted.</p> <p>18 But for the pooled analysis, because that</p> <p>19 extend over multiple years, that's going to be very</p> <p>20 unimportant.</p> <p>21 Q. But those individuals are included?</p> <p>22 A. Yes, they -- yes.</p> <p>23 Q. So again, as a literal matter, if someone is</p> <p>24 employed for one day, they are in the same pool of being</p> <p>25 at risk for promotion, correct?</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. If you go down the same page to paragraph 5.</p> <p>2 A. Uh-huh.</p> <p>3 Q. You see that under subparagraph 1, to be</p> <p>4 promoted, one has to have 12 months of continuous service.</p> <p>5 A. You cut out. I think you cut out, at least for</p> <p>6 me, sorry.</p> <p>7 Q. Yeah. Under subparagraph 1, do you see where it</p> <p>8 says you must have at least 12 months of continuous</p> <p>9 service?</p> <p>10 A. Yeah.</p> <p>11 Q. That requirement is not incorporated into your</p> <p>12 analysis, is it?</p> <p>13 A. I -- I have not incorporated these requirements</p> <p>14 for -- well, that one in particular, I -- I didn't do</p> <p>15 because it is not clear what to make of matters of</p> <p>16 continuous service when those can be affected by</p> <p>17 involuntary termination, and obviously because if you read</p> <p>18 the remaining items in paragraph 5, there's a bunch of</p> <p>19 things I have no data on.</p> <p>20 So again, whether this comes back later with</p> <p>21 Wipro supplying the data on all these things and gets</p> <p>22 analyzed remains to be seen, I suppose.</p> <p>23 Q. Okay. What about the case of employees who</p> <p>24 previously were promoted and would not be eligible for a</p> <p>25 subsequent promotion for another 24 months? And I'm</p>

<p style="text-align: right;">Page 73</p> <p>1 referring to the requirement of -- on the very next page,</p> <p>2 the second bullet point under subparagraph 1.</p> <p>3 <b>A. Right.</b></p> <p>4 Q. Is that reflected in any way in your analysis?</p> <p>5 <b>A. It's not.</b></p> <p>6 Q. Moving down that same page, are any of the</p> <p>7 performance scores included in your analysis?</p> <p>8 <b>A. No, and that's because to the best of my</b></p> <p>9 <b>knowledge Wipro declined to -- well, I don't know whether</b></p> <p>10 <b>they have the data, but they declined to turn it over if</b></p> <p>11 <b>they do have it. There's nothing I can do about that.</b></p> <p>12 <b>And again whether that surfaces later and we</b></p> <p>13 <b>look at the data, we will -- we will see. You know,</b></p> <p>14 <b>performance ratings again -- and this is not my expertise,</b></p> <p>15 <b>this is -- usually there's these are industrial psychology</b></p> <p>16 <b>folks who address questions of fairness of performance</b></p> <p>17 <b>rating, but it is always an issue in these kinds of cases.</b></p> <p>18 Q. Moving to paragraph -- I think it's subparagraph</p> <p>19 4, critical band factors --</p> <p>20 <b>A. Subparagraph -- you mean, in 5. Okay. Yeah.</b></p> <p>21 Q. Yeah, it's not the best numbering system. But do</p> <p>22 you see it's entitled "Critical Band Factors"?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Okay. And these apply only to employees and</p> <p>25 peers in Wipro Infotech?</p>	<p style="text-align: right;">Page 75</p> <p>1 VIDEOGRAPHER: Going off the record at</p> <p>2 12:43.</p> <p>3 (Recess taken from 12:43 p.m. to 12:48 p.m.)</p> <p>4 VIDEOGRAPHER: And we are back on the record</p> <p>5 at 12:48. You may proceed.</p> <p>6 Q. (BY MR. KING) If only I knew where we left off.</p> <p>7 THE REPORTER: Do you need help?</p> <p>8 Q. (BY MR. KING) I know we were looking through the</p> <p>9 promotion policies, and take your time to look through</p> <p>10 this, but I'm hoping this might get us through a lot of</p> <p>11 other questions.</p> <p>12 Is it fair to say if we look at Deposition</p> <p>13 Exhibit 2 that your analysis does not incorporate any of</p> <p>14 the qualifications and limitations that are included in</p> <p>15 Exhibit 2 regarding promotions? I know that's a global</p> <p>16 question but --</p> <p>17 <b>A. No. I do not estimate models for promotions,</b></p> <p>18 <b>taking account of things on which I don't have data</b></p> <p>19 <b>obviously or, you know, what -- what looks to me like from</b></p> <p>20 <b>this -- you know, from this and related documents, you</b></p> <p>21 <b>know, other -- other -- a few things I might have data on.</b></p> <p>22 <b>Not clear I want to.</b></p> <p>23 <b>Anyways, but I -- I'm -- as I said clearly</b></p> <p>24 <b>on what I'm doing at this point is documenting disparities</b></p> <p>25 <b>and promotion rates.</b></p>
<p style="text-align: right;">Page 74</p> <p>1 <b>A. I see that.</b></p> <p>2 Q. Did you segregate the group of Wipro employees in</p> <p>3 analyzing promotion opportunities by business unit?</p> <p>4 <b>A. No, because I don't know that I have any -- I</b></p> <p>5 <b>frankly don't even know what the paragraph below this</b></p> <p>6 <b>means, but I certainly would go through data on</b></p> <p>7 <b>whatever -- whatever they purport to be talking about</b></p> <p>8 <b>here.</b></p> <p>9 Q. Okay. Did you recognize that managers first must</p> <p>10 nominate employees there?</p> <p>11 <b>A. Well, I mean, I can -- I can see it says that,</b></p> <p>12 <b>but -- I'm not aware that I have any data on anything like</b></p> <p>13 <b>that. But, you know, to think about not nomination for a</b></p> <p>14 <b>promotion as an -- as an independent criterion for</b></p> <p>15 <b>promotion seems an odd way to think about it because it's</b></p> <p>16 <b>effectively the first stage of promotion decision, you</b></p> <p>17 <b>know, as opposed to performance rating, which -- which is</b></p> <p>18 <b>objective is the measure of employee performance.</b></p> <p>19 <b>I mean, if you told me that South Asians get</b></p> <p>20 <b>all the promotions, but that's because managers nominate</b></p> <p>21 <b>them, well, does that mean they got the promotion. No,</b></p> <p>22 <b>it's just kicking the can up the road.</b></p> <p>23 THE REPORTER: We are having audio issues</p> <p>24 again.</p> <p>25 (Reporter clarification.)</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Right.</p> <p>2 <b>A. And I'm not making stronger claims than that that</b></p> <p>3 <b>deviate strongly from the no hypothesis of equal promotion</b></p> <p>4 <b>rates, which is consistent with discrimination.</b></p> <p>5 Q. Let me try it this way.</p> <p>6 <b>A. I spilled my coffee. Give me one second. The</b></p> <p>7 <b>advantage of remote depositions. You can go I think</b></p> <p>8 <b>change your shirt.</b></p> <p>9 Q. That's pretty good.</p> <p>10 We looked through paragraph 3 in Deposition</p> <p>11 Exhibit 2, and I believe you testified that you did not</p> <p>12 consider the impact of the timeline specified in</p> <p>13 paragraph 3, correct?</p> <p>14 <b>A. That's probably correct, right. I didn't -- as</b></p> <p>15 <b>we established, I didn't take account of the possibility</b></p> <p>16 <b>that in a year, you came in after -- you were hired after</b></p> <p>17 <b>one of these effective dates and therefore couldn't have</b></p> <p>18 <b>showed up as promoted in that year.</b></p> <p>19 <b>But -- but the other -- I mean, but I</b></p> <p>20 <b>don't -- I don't need to know -- I mean, effective date is</b></p> <p>21 <b>not relevant to those who were hired before that because</b></p> <p>22 <b>my -- my snapshots are defined as of the end of each year</b></p> <p>23 <b>and whether you were promoted in that year.</b></p> <p>24 Q. But what if I'm terminated before June 1st and</p> <p>25 I'm B3 and below, I couldn't receive that promotion, could</p>



<p>Page 77</p> <p>1 I?</p> <p>2 <b>A. Well, actually -- I don't -- I don't actually</b></p> <p>3 <b>know. I -- this would be effective -- I'm not exactly</b></p> <p>4 <b>sure -- I mean, principally if you were promoted and then</b></p> <p>5 <b>fired, and I don't know that is what is in the data I have</b></p> <p>6 <b>is the decision to promote or the recording of for whom it</b></p> <p>7 <b>became effective, just like they promoted me voluntarily.</b></p> <p>8 <b>I don't -- I'm not sure that would or</b></p> <p>9 <b>wouldn't -- I'm not sure that would not show up as</b></p> <p>10 <b>promotion in my data. I understand it wouldn't be</b></p> <p>11 <b>effective. You wouldn't get your higher pay or, you know,</b></p> <p>12 <b>whatever until that day. That's what I interpret as</b></p> <p>13 <b>effective. I -- I simply don't know the link between that</b></p> <p>14 <b>and the data.</b></p> <p>15 Q. And would your answer be the same with respect to</p> <p>16 the next line, C1 and above --</p> <p>17 (Simultaneous speakers.)</p> <p>18 <b>A. Everything would be the same after that.</b></p> <p>19 Q. Okay. And you didn't account for the fact that</p> <p>20 you needed 12 months of continuous service. That's not</p> <p>21 reflected in your analysis?</p> <p>22 <b>A. We already established that, and again it's not</b></p> <p>23 <b>clear -- it's not clear -- if I were estimating a model</b></p> <p>24 <b>for promotions with more controls, and, you know, we had</b></p> <p>25 <b>all this data and all these other things later on. It's</b></p>	<p>Page 79</p> <p>1 it is.</p> <p>2 MR. RODRIGUEZ: That would be the one</p> <p>3 labeled number 10 and the year 2015.</p> <p>4 MR. KING: Right. That's Deposition Exhibit</p> <p>5 Number 3?</p> <p>6 MR. RODRIGUEZ: Correct.</p> <p>7 Q. (BY MR. KING) And we can agree since you didn't</p> <p>8 have it, you couldn't have relied on any information in</p> <p>9 it?</p> <p>10 <b>A. Correct. It looks to me like I had -- I know</b></p> <p>11 <b>these numbers are weird, but I have a 9 and 11, which I</b></p> <p>12 <b>think is 2 and 4 judging from my -- looking at my</b></p> <p>13 <b>materials page.</b></p> <p>14 Q. Deposition Exhibit Number 4, do you have that</p> <p>15 now?</p> <p>16 <b>A. I do.</b></p> <p>17 Q. Would you have that effective date on page 2 of</p> <p>18 that exhibit or the second page?</p> <p>19 <b>A. September 21, 2017.</b></p> <p>20 Q. Okay. So would you please look at paragraph 5 on</p> <p>21 that same page. You see the first bullet point once again</p> <p>22 is about 12 months of continuous service, and I assume</p> <p>23 your answer is the same as earlier?</p> <p>24 <b>A. Yes. My answer would be the same as earlier</b></p> <p>25 <b>about what I -- I didn't use or couldn't use and why I</b></p>
<p>Page 78</p> <p>1 not clear I would -- I would want to include that model</p> <p>2 anyways since I know there's a termination difference</p> <p>3 across the two groups.</p> <p>4 That goes back to what we talked about</p> <p>5 earlier, way earlier in the wage, regression and gender</p> <p>6 gap for example, over-controlling -- controlling for</p> <p>7 things I couldn't themselves reflect --</p> <p>8 Q. We also discussed this minimum of 24 months</p> <p>9 waiting period essentially who have been previously</p> <p>10 promoted. That's not accounted for?</p> <p>11 <b>A. Right. And then I would not have -- that</b></p> <p>12 <b>would -- would also at least partially fall under the data</b></p> <p>13 <b>I don't have because I don't have any data before 2014.</b></p> <p>14 <b>So if I'm studying that -- you know, at least -- at least</b></p> <p>15 <b>for the first two years of the data, let's say, that would</b></p> <p>16 <b>be the same problem as for the performance data. I simply</b></p> <p>17 <b>couldn't know whether you were previously promoted.</b></p> <p>18 Q. And then you anticipated my next question, so you</p> <p>19 didn't include any performance information?</p> <p>20 <b>A. I didn't have it.</b></p> <p>21 Q. Okay. Please turn to Deposition Exhibit 3.</p> <p>22 <b>A. Yeah, that's 2278. I don't -- I don't think I</b></p> <p>23 <b>listed this one in my material. I don't think I have this</b></p> <p>24 <b>one, although they are very similar.</b></p> <p>25 MR. KING: I just want to confirm which one</p>	<p>Page 80</p> <p>1 might not have used it anyways.</p> <p>2 Q. All right. The next bullet point refers to a</p> <p>3 "Team Rainbow." Do you see that?</p> <p>4 <b>A. I'm sorry, yeah. I was just -- maybe I am</b></p> <p>5 <b>missing -- yes, I do see Team Rainbow in paragraph 5.</b></p> <p>6 Q. Do you know what that is?</p> <p>7 <b>A. No.</b></p> <p>8 Q. I take it since you don't know what it is, you</p> <p>9 couldn't have accounted for it in your analysis?</p> <p>10 <b>A. Yes. Well, I mean, just by -- well, put it this</b></p> <p>11 <b>way, I -- I -- I have a -- it seems to be related to the</b></p> <p>12 <b>band, so I'm guessing this is just, you know, a subset of</b></p> <p>13 <b>bands, in which case I did do it because I looked at -- I</b></p> <p>14 <b>looked at promotion differences by bands.</b></p> <p>15 <b>Now maybe team -- maybe -- it says "in case</b></p> <p>16 <b>the joining band of the employee is Team Rainbow," that</b></p> <p>17 <b>implies something other than Team Rainbow is not like the</b></p> <p>18 <b>bands, so I don't know what it is, but then I wouldn't --</b></p> <p>19 <b>then I might not have.</b></p> <p>20 Q. The next bullet point deals with the 24 months in</p> <p>21 the current Career Band if you had been promoted before.</p> <p>22 Do you see that?</p> <p>23 <b>A. I do.</b></p> <p>24 Q. Okay. Is your answer the same here as it was</p> <p>25 with respect to the previous exhibit?</p>

<p style="text-align: right;">Page 81</p> <p>1 <b>A. No difference, yep.</b></p> <p>2 Q. Okay. Then if you turn to page, you see that</p> <p>3 there are various performance criteria, and is your answer</p> <p>4 with respect to the performance criteria the same as with</p> <p>5 the previous exhibit?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Meaning you were not able -- or you did not take</p> <p>8 it into account?</p> <p>9 <b>A. The first, I was not able to. I didn't get it.</b></p> <p>10 <b>I didn't have the data, and I believe that's because Wipro</b></p> <p>11 <b>was asked to provide it -- well, I believe Wipro was asked</b></p> <p>12 <b>to provide it and didn't. Whether they could have, I</b></p> <p>13 <b>don't know.</b></p> <p>14 Q. Okay. Moving down that page to the next</p> <p>15 subparagraph labeled 3, "Evaluation"?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. It says in bold, Band 3 and below -- B3 &amp; Below"?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. You see something referred to as "Trend.Nxt</p> <p>20 guidelines."</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Do you know what those are?</p> <p>23 <b>A. No.</b></p> <p>24 Q. Okay. Is it fair to say that if you didn't know</p> <p>25 what they are, you could not have taken them into account?</p>	<p style="text-align: right;">Page 83</p> <p>1 <b>promotion rates between South Asians and non-South Asian.</b></p> <p>2 <b>A vacancy is a vacancy.</b></p> <p>3 Q. Then on Bates page 828 --</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. -- you see it describes that "Trend.Nxt</p> <p>6 competency framework"?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Did that figure at all in your analysis?</p> <p>9 <b>A. Didn't for the same reason I described and</b></p> <p>10 <b>explained earlier.</b></p> <p>11 Q. Okay. Sorry. The phone will stop ringing in a</p> <p>12 second. Please let's look at Exhibit 5.</p> <p>13 <b>A. Okay.</b></p> <p>14 Q. Did you previously receive this document?</p> <p>15 <b>A. I -- I don't believe so. It's not in my</b></p> <p>16 <b>materials. It looks similar to what we talked about, but</b></p> <p>17 <b>I think I only got two of the four.</b></p> <p>18 Q. Okay. Just to be sure we're talking about the</p> <p>19 same exhibit --</p> <p>20 <b>A. Oh, I'm sorry, this is a different -- I'm sorry.</b></p> <p>21 <b>Global Company -- 49 -- 42929.</b></p> <p>22 Q. Yes.</p> <p>23 <b>A. Yeah. I don't list it here, which hopefully</b></p> <p>24 <b>means I didn't get it because this is supposed to be</b></p> <p>25 <b>everything I got and -- everything I got and deemed</b></p>
<p style="text-align: right;">Page 82</p> <p>1 <b>A. Yes, I mean, there was -- there's -- there was,</b></p> <p>2 <b>you know, an early decision that I was going to look at</b></p> <p>3 <b>just disparities and the outcome. So I didn't -- there</b></p> <p>4 <b>wasn't a need to figure out what all these things were.</b></p> <p>5 Q. Okay.</p> <p>6 <b>A. And that data -- I didn't have data. This is</b></p> <p>7 <b>under "Evaluation." I didn't have data on evaluations.</b></p> <p>8 <b>That was kind of the end of the story.</b></p> <p>9 Q. If you turn to -- well, let's use the Bates label</p> <p>10 at the bottom 827 because the pages aren't numbered.</p> <p>11 <b>A. Oh, same document?</b></p> <p>12 Q. Same document, sir.</p> <p>13 <b>A. Okay.</b></p> <p>14 Q. Great. Please look at the paragraph below the</p> <p>15 diagram and the sentence -- second sentence says "Final</p> <p>16 promotion decision is taken after leadership review and is</p> <p>17 also dependent on there being a vacancy at the higher</p> <p>18 band."</p> <p>19 Did you in any way incorporate the notion</p> <p>20 that a vacancy was required in order for a candidate to be</p> <p>21 promoted?</p> <p>22 <b>A. To the best of my knowledge, I have -- I have no</b></p> <p>23 <b>information on vacancies or anything like that, you know,</b></p> <p>24 <b>but I should say is I can't -- I can't quite imagine a</b></p> <p>25 <b>reason why this would generate the difference between</b></p>	<p style="text-align: right;">Page 84</p> <p>1 <b>relevant, so I don't recall. I -- I -- my best</b></p> <p>2 <b>assessment is I did not get it.</b></p> <p>3 Q. Okay. Let's put this aside then. In</p> <p>4 paragraph 39 --</p> <p>5 <b>A. Back to my report?</b></p> <p>6 Q. Yes. Thank you for the reminder.</p> <p>7 <b>A. Okay.</b></p> <p>8 Q. And that's Exhibit 1. Paragraph 39 reports the</p> <p>9 results for your promotion analysis.</p> <p>10 <b>A. Right.</b></p> <p>11 Q. And I just wanted to confirm that in this first</p> <p>12 paragraph, there are no controls for anything, and this</p> <p>13 might be referred to as a 2x2 analysis essentially, where</p> <p>14 you use South Asian or non-South Asian, whether you are</p> <p>15 promoted or you're not promoted?</p> <p>16 <b>A. Just looking at the table to confirm, but yeah.</b></p> <p>17 (Simultaneous speakers.)</p> <p>18 Q. Correct?</p> <p>19 <b>A. Yeah.</b></p> <p>20 Q. Okay. And then in table -- I'm sorry,</p> <p>21 paragraph 41, you're reporting on results using</p> <p>22 Career Bands. Am I correct?</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. And the results that your reference are recorded</p> <p>25 in Table 4. Are there any disparities in Table 4 that are</p>

<p style="text-align: right;">Page 85</p> <p>1 not significant in your opinion?</p> <p>2 <b>A. Well, let's -- let's just be clear on one thing,</b></p> <p>3 <b>you know. When we say statistically significant, you</b></p> <p>4 <b>always have to specify a significance level -- and the</b></p> <p>5 <b>Court should use a 5 or 1 percent level, but you know, you</b></p> <p>6 <b>can define statistically significance at a 47 percent</b></p> <p>7 <b>level if you want.</b></p> <p>8 Q. By whom --</p> <p>9 <b>A. So if there's a 5 percent level, which I'm</b></p> <p>10 <b>getting to, then it would be -- the not not significant</b></p> <p>11 <b>5 percent level is the group A1, A2, A3, AA, D2 just on</b></p> <p>12 <b>the borderline and E. Those, by the way are -- except for</b></p> <p>13 <b>A3 and AA, those are bands with a lot fewer people.</b></p> <p>14 Q. Thank you.</p> <p>15 When you identify an individual with a band,</p> <p>16 is it the band into which you are promoted or the band</p> <p>17 from which you are promoted?</p> <p>18 <b>A. What I'm using here is -- is -- is almost exactly</b></p> <p>19 <b>the band from which you were promoted. I actually -- I'm</b></p> <p>20 <b>doing a slight simplification here as the notes explain.</b></p> <p>21 <b>It's the -- it's the -- as it says, it's the band at which</b></p> <p>22 <b>you were first observed in the data, so which is 2014 if</b></p> <p>23 <b>you were already working and later -- later if you got</b></p> <p>24 <b>hired subsequent to that.</b></p> <p>25 <b>We don't -- I don't track it kind of</b></p>	<p style="text-align: right;">Page 87</p> <p>1 <b>could rule out alternative explanations because I don't</b></p> <p>2 <b>have the data, and as I said before that -- you know, if</b></p> <p>3 <b>data are produced or arguments are produced, I assume I'll</b></p> <p>4 <b>have a chance to respond to that.</b></p> <p>5 My -- my understanding is the way (audio</p> <p>6 distortion) they are here for these -- applications.</p> <p>7 Q. I know you noticed that some of the data you've</p> <p>8 been provided includes what the company refers to as</p> <p>9 contract employees, and you've identified who they are in</p> <p>10 your dataset.</p> <p>11 Am I correct in believing that you've</p> <p>12 excluded them from all of your analyses?</p> <p>13 <b>A. The only -- the only places they are included is</b></p> <p>14 <b>in the assignment of names. I don't -- because as we</b></p> <p>15 <b>discussed earlier -- earlier, I'm using the data on people</b></p> <p>16 <b>whose nationality is South Asian as part of my source of</b></p> <p>17 <b>South Asian names, and there would be no reason to not --</b></p> <p>18 <b>more information, no reason not to use them for that --</b></p> <p>19 <b>for that information, but they do not get used anywhere</b></p> <p>20 <b>else, I believe.</b></p> <p>21 Q. Let me rephrase then what I asked before. These</p> <p>22 contract employees play no part in any of your</p> <p>23 quantitative analyses?</p> <p>24 <b>A. Correct. They are I believe -- I believe -- I</b></p> <p>25 <b>believe every table of quantitative analysis either says</b></p>
<p style="text-align: right;">Page 86</p> <p>1 <b>dynamically, but there's almost no cases of people being</b></p> <p>2 <b>promoted more than once, so that -- that should be thought</b></p> <p>3 <b>of as virtually equivalent to the band you were being</b></p> <p>4 <b>promoted from.</b></p> <p>5 Q. And you don't take into account how long anyone</p> <p>6 is in a band, correct?</p> <p>7 <b>A. Correct, for the same reasons I explained</b></p> <p>8 <b>earlier.</b></p> <p>9 Q. Right. Is it a fair summary to say that within</p> <p>10 each of the bands, you consider only South Asian versus</p> <p>11 non-South Asian status but no other differentiating</p> <p>12 factors?</p> <p>13 <b>A. That's accurate. I'm documenting the disparities</b></p> <p>14 <b>in this case by Table 4.</b></p> <p>15 Q. And in paragraph 42 your conclusion is that the</p> <p>16 results are strongly consistent with discrimination?</p> <p>17 <b>A. Well, you left out a part, "in higher Career</b></p> <p>18 <b>Bands" is what the sentence says.</b></p> <p>19 Q. Oh, right, right. Exactly.</p> <p>20 <b>A. And in the paragraph above I'm a lot more</b></p> <p>21 <b>specific about which band.</b></p> <p>22 Q. Okay. I just want to emphasize that your opinion</p> <p>23 is consistency, not let's say exclusivity in the sense</p> <p>24 that you've ruled out alternative explanations?</p> <p>25 <b>A. That's correct. I have not done analyses that</b></p>	<p style="text-align: right;">Page 88</p> <p>1 <b>they're excluded or says -- as noted from the earlier</b></p> <p>2 <b>table, which says the same thing.</b></p> <p>3 Q. Okay. Have you considered the hiring of --</p> <p>4 sorry, voluntary terminations with Wipro in any fashion?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Do you know whether South Asians predominate</p> <p>7 among voluntary terminations?</p> <p>8 <b>A. You mean disproportionately?</b></p> <p>9 Q. Yes.</p> <p>10 <b>A. I mean, I'm sure -- I'm sure they predominate</b></p> <p>11 <b>because they predominate on employment, but I -- I have</b></p> <p>12 <b>not looked -- I have not -- to answer my first question --</b></p> <p>13 <b>your first question: I have not looked at those data, so</b></p> <p>14 <b>I don't know more.</b></p> <p>15 Q. And they were never a part of any analysis you</p> <p>16 performed?</p> <p>17 <b>A. No. I've never -- I've never seen voluntary</b></p> <p>18 <b>terminations treated in a discrimination case as an -- as</b></p> <p>19 <b>an outcome of interest. I mean, in the economics</b></p> <p>20 <b>literature, we are sometimes -- you know, we sort of -- we</b></p> <p>21 <b>recognize the possibility that someone who is made very</b></p> <p>22 <b>unhappy at work may voluntarily quit, even though it's not</b></p> <p>23 <b>really voluntary, but that's a -- you know, it's a</b></p> <p>24 <b>theoretical curiosity.</b></p> <p>25 Q. Have you done any analysis of how Visas impact</p>

<p style="text-align: right;">Page 89</p> <p>1 the decision to quit voluntarily?</p> <p>2 <b>A. No.</b></p> <p>3 Q. In any study that you've done previously?</p> <p>4 <b>A. You mean in any case?</b></p> <p>5 Q. Yeah.</p> <p>6 <b>A. So sort of -- do you mean have I studied the</b></p> <p>7 <b>effect of Visa status separately from -- not necessarily</b></p> <p>8 <b>along with -- with nationality; is that what you're</b></p> <p>9 <b>asking?</b></p> <p>10 Q. I'm struggling about the separately from</p> <p>11 qualification or in combination. It seems to me it would</p> <p>12 be relevant as well.</p> <p>13 <b>A. Right. Right. Right. I don't -- I didn't</b></p> <p>14 <b>review all my other -- I didn't review reports for other</b></p> <p>15 <b>cases to prepare for this depo, I guess, for obvious</b></p> <p>16 <b>reasons. I don't think so.</b></p> <p>17 Q. So the methodology, just in a nutshell, in your</p> <p>18 involuntary discrimination is look at everybody who was</p> <p>19 there who could have been involuntarily terminated, and</p> <p>20 then see whether the proportion of termination differs</p> <p>21 between South Asians and non-South Asian?</p> <p>22 <b>A. The proportion of involuntary termination is</b></p> <p>23 <b>different?</b></p> <p>24 Q. Yes.</p> <p>25 <b>A. Yes.</b></p>	<p style="text-align: right;">Page 91</p> <p>1 Q. These people are removing themselves from the</p> <p>2 pool.</p> <p>3 <b>A. I mean, you know, I'll -- I'll just be clear.</b></p> <p>4 <b>I -- I have no reason to believe it's true. I just --</b></p> <p>5 <b>just I think it's important for a clear answer about the</b></p> <p>6 <b>hypothetical.</b></p> <p>7 Q. Uh-huh.</p> <p>8 <b>A. But obviously if it was impossible for</b></p> <p>9 <b>South Asian Visa holders to be involuntarily terminated,</b></p> <p>10 <b>then I -- I would estimate a lower involuntary termination</b></p> <p>11 <b>rate for them to be clear.</b></p> <p>12 Q. I was having trouble understanding your answer.</p> <p>13 Would you say it's impossible -- the question is: If</p> <p>14 South Asians are motivated to voluntarily quit or remove</p> <p>15 themselves from the pool voluntarily because either</p> <p>16 they're incentivized to get alternative employment or</p> <p>17 because they are being repatriated or for any reason that</p> <p>18 disproportionately affected them relative to</p> <p>19 non-South Asian, that -- but that would bias the</p> <p>20 conclusions you had reached by only analyzing involuntary</p> <p>21 terminations.</p> <p>22 <b>A. Well --</b></p> <p>23 MR. LOW: Objection, asked and answered, but</p> <p>24 go ahead.</p> <p>25 <b>A. I mean, you're constructing the hypothetical, and</b></p>
<p style="text-align: right;">Page 90</p> <p>1 Q. Suppose it's the case because of Visa issues,</p> <p>2 South Asian employees are more motivated to leave before</p> <p>3 they're terminated involuntarily.</p> <p>4 <b>A. You don't have to ask -- answer my question</b></p> <p>5 <b>because you're the one asking questions, but just -- just</b></p> <p>6 <b>so I know -- why would that happen just so I can think of</b></p> <p>7 <b>what you have in mind?</b></p> <p>8 Q. Well, there may be more than one cause. But</p> <p>9 suppose these individuals are required to repatriate after</p> <p>10 a period of time, so they remove themselves from the pool</p> <p>11 of those who could be involuntarily terminated.</p> <p>12 <b>A. I mean, it's -- I say two things. It's a</b></p> <p>13 <b>hypothetical. It's not clear why you'd do that because I</b></p> <p>14 <b>suppose if I were here and really wanted to be here, I'd</b></p> <p>15 <b>say, terminate me first, and then -- and then I'll decide</b></p> <p>16 <b>what to do.</b></p> <p>17 <b>But also understand there's a -- this may</b></p> <p>18 <b>not be relevant but, you know, to exactly answer your</b></p> <p>19 <b>hypothetical, but in terms of analysis, my understanding</b></p> <p>20 <b>is there's a stipulation that reference to what the</b></p> <p>21 <b>implication of going back to India is for terminations</b></p> <p>22 <b>analyses is off the table.</b></p> <p>23 Q. Well, we can argue about that, but what</p> <p>24 about as -- as a statistical matter or an economic matter.</p> <p>25 <b>A. I would state it again --</b></p>	<p style="text-align: right;">Page 92</p> <p>1 <b>your hypothetical is that if you're a non-South Asian and</b></p> <p>2 <b>the company wants to get rid of you, they just</b></p> <p>3 <b>involuntarily terminate you. If you're a South Asian,</b></p> <p>4 <b>they say, we're going to involuntarily terminate you, but</b></p> <p>5 <b>before -- but either they give you a warning or you just</b></p> <p>6 <b>choose to do before they do, you do something else.</b></p> <p>7 <b>Sure, then it's biased. I don't know why</b></p> <p>8 <b>it's any more likely to be biased in that direction than</b></p> <p>9 <b>the other direction, and I don't know how plausible the</b></p> <p>10 <b>whole scenario is anyways.</b></p> <p>11 Q. (BY MR. KING) What if the hypothetical is true,</p> <p>12 the bias would only be in one direction, correct?</p> <p>13 <b>A. I think -- I think -- I think I've acknowledged</b></p> <p>14 <b>that, but I think for the purpose of being clear, it's</b></p> <p>15 <b>important just to say that they don't -- you know, in the</b></p> <p>16 <b>absence of evidence, the opposite is equally likely.</b></p> <p>17 <b>Maybe -- maybe there's a lot of South Asians</b></p> <p>18 <b>to leave first I have no idea. But obviously, you know,</b></p> <p>19 <b>if you do something else before you get fired because</b></p> <p>20 <b>you're told you're going to get fired tomorrow, then</b></p> <p>21 <b>getting fired is not necessarily the -- you know, the be</b></p> <p>22 <b>all and end all indicator of the company wanting to get</b></p> <p>23 <b>rid of you.</b></p> <p>24 Q. Have you done any analyses of Visa holders</p> <p>25 relative to non-Visa holders in any fashion in this case?</p>

<p style="text-align: right;">Page 93</p> <p>1 <b>A. Not directly except obviously a lot more of the</b></p> <p>2 <b>South Asians are Visa holders.</b></p> <p>3 Q. But you didn't separately look at how non-Visa</p> <p>4 holding South Asians might fair?</p> <p>5 <b>A. Correct.</b></p> <p>6 Q. Did you consider whether the potential mobility</p> <p>7 of South Asians versus non-South Asian in the US may</p> <p>8 differentially affect the likelihood of obtaining a job if</p> <p>9 they are on the bench?</p> <p>10 <b>A. No, I have no -- I have no data that I'm aware of</b></p> <p>11 <b>on -- well, certainly on a potential mobility obviously or</b></p> <p>12 <b>actual mobility. Well, let me see potential -- potential</b></p> <p>13 <b>mobility.</b></p> <p>14 Q. Right. When you look at the specific reasons for</p> <p>15 termination, it's on Table 7, page 29.</p> <p>16 <b>A. Got it.</b></p> <p>17 Q. Would you agree there are three primary reasons</p> <p>18 for involuntary termination: Redundancy, chronic</p> <p>19 nonbillable and poor performance?</p> <p>20 <b>A. Well, I mean, I -- I sorted these by order of how</b></p> <p>21 <b>many there are, and those -- those are the three biggest.</b></p> <p>22 <b>One could argue disciplinary issues at 530 is pretty</b></p> <p>23 <b>close, and then there's a pretty big drop off.</b></p> <p>24 (Simultaneous speakers.)</p> <p>25 Q. Yeah.</p>	<p style="text-align: right;">Page 95</p> <p>1 <b>poor performance, you got fired because of disciplinary</b></p> <p>2 <b>issues.</b></p> <p>3 <b>We have very little data on people getting</b></p> <p>4 <b>fired even without a reason.</b></p> <p>5 Q. What's your understanding of chronic nonbillable?</p> <p>6 <b>A. My understanding of chronic nonbillable is from</b></p> <p>7 <b>the bench, and I -- I know -- I sort of know what that</b></p> <p>8 <b>means aside from documents because my son is a consultant,</b></p> <p>9 <b>so I know what on the bench means because -- he's never</b></p> <p>10 <b>been there more than a couple of days, but he gets very</b></p> <p>11 <b>nervous, but he becomes -- he becomes bill -- fortunately</b></p> <p>12 <b>he becomes billable quickly.</b></p> <p>13 <b>I don't know -- I don't know if it</b></p> <p>14 <b>encompasses anything else, but I don't -- I don't think it</b></p> <p>15 <b>is.</b></p> <p>16 Q. Would you disagree that the time you are likely</p> <p>17 to spend on the bench will increase the more selective you</p> <p>18 are about accepting subsequent employment?</p> <p>19 <b>A. So you have in mind a scenario where I'm on the</b></p> <p>20 <b>bench and I get offered assignments and turn them down.</b></p> <p>21 Q. Yes.</p> <p>22 <b>A. I mean, by definition of the way you set it up,</b></p> <p>23 <b>yes, I have no idea if that happened. My -- from what I</b></p> <p>24 <b>know of -- my kids know their MBA friends, they never turn</b></p> <p>25 <b>them down, but maybe, you know, that's -- I don't know</b></p>
<p style="text-align: right;">Page 94</p> <p>1 <b>A. Predominant is a --</b></p> <p>2 <b>Q. -- we can include disciplinary issues.</b></p> <p>3 <b>A. Okay. All right.</b></p> <p>4 <b>THE WITNESS: Sorry, Sara.</b></p> <p>5 <b>A. Those are the biggest.</b></p> <p>6 Q. (BY MR. KING) Okay. Looking at discipline,</p> <p>7 would you agree that disciplinary problems typically are</p> <p>8 more prominent among younger employees than older</p> <p>9 employees?</p> <p>10 <b>A. I have no idea. If they were 16, it wouldn't</b></p> <p>11 <b>surprise me, but they're probably not 16.</b></p> <p>12 Q. What about tenure, would you think that</p> <p>13 disciplinary problems are more common among long-tenured</p> <p>14 employees rather than short-tenured employees?</p> <p>15 <b>A. I mean, I could -- I could invent stories either</b></p> <p>16 <b>way, you know, you're young, you want to keep your job.</b></p> <p>17 <b>You're old, and you feel protected. I mean, I'm a tenured</b></p> <p>18 <b>professor which is a different definition of the word</b></p> <p>19 <b>tenured, so I can really misbehave but that's not the</b></p> <p>20 <b>point.</b></p> <p>21 Q. Yeah.</p> <p>22 <b>A. But, you know, I'm not aware -- put it this way,</b></p> <p>23 <b>I'm not aware of, I think, of any labor economics research</b></p> <p>24 <b>where we have data on these kinds of things by which, I</b></p> <p>25 <b>mean, some kind of, you know -- you got fired because of</b></p>	<p style="text-align: right;">Page 96</p> <p>1 <b>more. That's anecdotal I will acknowledge.</b></p> <p>2 Q. Okay.</p> <p>3 <b>A. They want to get back to work, and consultants</b></p> <p>4 <b>travel all the time.</b></p> <p>5 Q. What's your understanding of redundancy?</p> <p>6 <b>A. Well, the English use it the same way we use</b></p> <p>7 <b>unemployed. So I'm always a little confused by that term.</b></p> <p>8 <b>But I think that just means we don't really need you, you</b></p> <p>9 <b>know, whether work has diminished or whatever. But I'm</b></p> <p>10 <b>not -- it's a label they use. I don't know exactly what</b></p> <p>11 <b>it is in this context.</b></p> <p>12 Q. Do you understand whether redundancy is</p> <p>13 determined on an individual basis or is it the case that a</p> <p>14 unit of employment can be discontinued?</p> <p>15 <b>A. I would interpret it in general as -- as more</b></p> <p>16 <b>likely due to -- well, yeah, I mean, not the immediate.</b></p> <p>17 <b>I -- I -- my -- I'm shooting from the hip here because I</b></p> <p>18 <b>don't have -- I didn't -- I haven't read anything that</b></p> <p>19 <b>sort of explains what these are.</b></p> <p>20 <b>But looking at the labels, it doesn't look</b></p> <p>21 <b>as much like an independent behavioral kind of category,</b></p> <p>22 <b>but I'm only supplying an educated guess to be clear, just</b></p> <p>23 <b>because a lot of other ones do sound like that. That's</b></p> <p>24 <b>why I'm saying that.</b></p> <p>25 Q. Look at Table 7. I just want to understand the</p>



<p>Page 97</p> <p>1 column heading that says "Percent of involuntarily 2 terminated for a reason." 3 <b>A. The "of" -- the "of" is confusing. The "of"</b> 4 <b>should -- the "of" shouldn't be there. Well, it's the</b> 5 <b>percentage -- the tot- -- if you take the percentages,</b> 6 <b>let's say the one -- the fourth column, the one for</b> 7 <b>South Asians --</b> 8 Q. Yeah. 9 <b>A. -- and you add up all those percentages, you will</b> 10 <b>get the overall termination rate. So this is -- this is</b> 11 <b>the percent involuntarily terminated for a reason -- well,</b> 12 <b>as long as a reason is always recorded. But you can be</b> 13 <b>involuntarily terminated for one reason, and they should</b> 14 <b>add up in principle to the total involuntary terminations.</b> 15 Q. Right. The percentages, if I understand it 16 correctly, are the percentage of all those who could have 17 been terminated -- 18 <b>A. Right.</b> 19 Q. -- as opposed to the denominator of only those 20 who, in fact, were terminated? 21 <b>A. Correct. That's why -- that's why down the</b> 22 <b>column it adds up to --</b> 23 Q. Right. 24 <b>A. -- to the overall involuntary termination rate,</b> 25 <b>so the "of" is a little -- it should probably -- because</b></p>	<p>Page 99</p> <p>1 Thank you. 2 MR. KING: I'm finished. Thank you very 3 much, Dr. Neumark. 4 THE VIDEOGRAPHER: Shall we conclude? 5 MR. KING: Yes. 6 THE VIDEOGRAPHER: Okay. Going off the 7 record at 1:38. Thank you, everyone. 8 (Deposition concluded at 1:38 p.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>Page 98</p> <p>1 <b>it makes it a little less clear than it could.</b> 2 Q. Okay. 3 MR. KING: A five-minute break, please. 4 VIDEOGRAPHER: Going off the record at 1:29. 5 (Recess taken from 1:29 p.m. to 1:37 p.m.) 6 VIDEOGRAPHER: And we are back on the record 7 at 1:37. You may proceed. 8 MR. KING: I'll pass the witness. 9 EXAMINATION 10 BY MR. LOW: 11 Q. Just one question, Dr. Neumark. You were asked a 12 bunch of questions about what was in your report and what 13 analyses you have done in your report. 14 Is it fair to say that the best source of 15 what you did in your report is to read the report itself? 16 <b>A. I hope so, yes.</b> 17 Q. And if you had any details, it would be reflected 18 in your report? 19 <b>A. Of course. There's a lot of details. There's a</b> 20 <b>lot of table notes and, you know, I reviewed it, but I --</b> 21 <b>it's not -- you know, not like you would for a college</b> 22 <b>exam where I can't look anything up. I always -- I always</b> 23 <b>am clear that -- and I hope everyone agrees that</b> 24 <b>depositions are not memory tests.</b> 25 MR. LOW: I don't have any other questions.</p>	<p>Page 100</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE SOUTHERN DISTRICT OF TEXAS 3 HOUSTON DIVISION 4 JAMES PHILLIPS, ET AL. ) 5 Plaintiffs ) 6 ) 7 ) 8 ) 9 VS. ) Civil Action No. 10 ) 4:18-cv-00821 11 ) 12 WIPRO LIMITED, ) 13 Defendant ) 14 ) 15 ) 16 ) 17 ) 18 ) 19 ) 20 ) 21 ) 22 ) 23 ) 24 ) 25 )</p> <p>REPORTER'S CERTIFICATION DEPOSITION OF DAVID NEUMARK, PH.D. TAKEN AUGUST 25, 2021</p> <p>I, SARA BIELAMOWICZ, Certified Shorthand Reporter and Notary Public in and for the State of Texas, hereby certify to the following: That the witness, DAVID NEUMARK, PH.D., was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness; That the original deposition was delivered to Mr. Allan G. King; That a copy of this certificate was served on all parties and/or the witness shown herein on _____. I further certify that pursuant to FRCP No. 30(f)(i) that the signature of the deponent was not requested by the deponent or a party before the completion</p>



1 of the deposition.

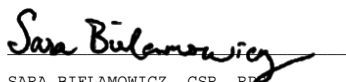
2 I further certify that I am neither counsel for,  
3 related to, nor employed by any of the parties in the  
4 action in which this proceeding was taken, and further  
5 that I am not financially or otherwise interested in the  
6 outcome of the action.

7 Subscribed and sworn to on this the 9th day of  
8 September, 2021.

9

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SARA BIELAMOWICZ, CSR, REC

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CSR NO. 4838; Expiration Date: 1-31-23

Lexitas - Firm Registration No. 95

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13101 Northwest Freeway, Suite 210

Houston, Texas 77040

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281-469-5580

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